This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

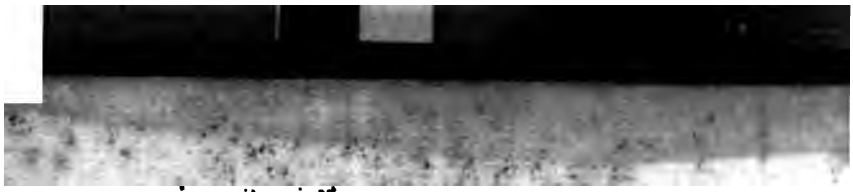
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

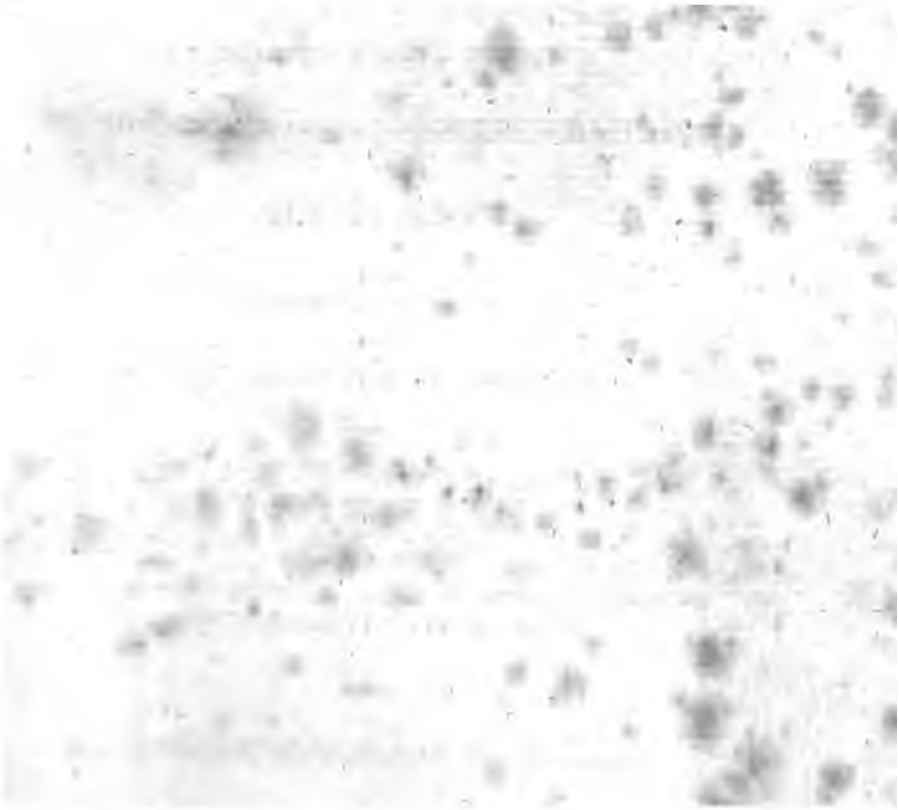
About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`



8°. A 15. 53. Jur.

L, L
Cw. Scotl.
510
H 973



TREATISE

ON THE

OFFICES

OF

JUSTICE OF PEACE; CONSTABLE;
COMMISSIONER OF SUPPLY;
AND
COMMISSIONER UNDER COMPREHENDING ACTS,
IN

SCOTLAND;

WITH
OCCASIONAL OBSERVATIONS
UPON
OTHER MUNICIPAL JURISDICTIONS.

TO WHICH ARE ADDED,

APPENDIXES,

CONTAINING

SOME OF THE STATUTES, FORMS OF PROCEEDINGS, AND WRITS, REFERRED TO IN THE WORK.

By GILBERT HUTCHESON, Esq. Advocate.

VOL. I.

EDINBURGH:
PRINTED FOR WILLIAM CREECH.
1806.

Edinburgh, printed by Mundell and Son.

TO

THE RIGHT HONOURABLE

ILAY CAMPBELL

OF SUCCOTH,

LORD PRESIDENT

OF

THE COURT OF SESSION,

THE FOLLOWING WORK,

UNDERTAKEN UPON THE SUGGESTION,

AND

EXECUTED UNDER THE INSPECTION,

OF

HIS LORDSHIP,

IS

RESPECTFULLY INSCRIBED,

BY

THE AUTHOR.

PREFACE.

CERTAIN offices of great importance, connected with the law, are, in general, executed without the aid of professional preparation. Yet some acquaintance with various branches of the law of Scotland is indispensible to the easy, secure, and satisfactory discharge, of the duties respectively attached to them. To supply such information is the design of this Treatise.

THE history, constitution, and nature, of the several offices, are explained in the First Book. Separate chapters are allotted to the office of Constable, of Commissioner of Supply, and Commissioner under the Comprehending Acts.

THE office of Justice of the Peace required more detail: The Office in general; the Sessions of the

Peace; their general Jurisdiction; their Civil Powers; the Duty of Justices under the Small Debt Acts; the Criminal Jurisdiction of the Sessions; the Rules of Evidence by which their Decisions ought to be regulated; the Form of Process, of Decrees, of Review,—are, therefore, explained at large in separate chapters.

THIS, however, is making the magistrate acquainted with his powers merely. In the three succeeding Books, therefore, the subjects are explained, with which, in the exercise of those powers, he is necessarily conversant; under each head, care being taken to mention, particularly, to what magistracy jurisdiction belongs; whether to Commissioners of Supply, or to Commissioners under Comprehending Acts, or to Constables, or to the Sessions of the Peace, or to individual Justices of Peace; and whether to one, two, or more Justices; and whether it belongs to these magistrates exclusively, or in common with others also; particularly Judges Ordinary, that is, Sheriffs and Magistrates of boroughs, the native jurisdictions of our common law.

THE Public Peace, is the subject of the Second Book, which consists of three chapters: the first, concerning Breaches of the Peace; the second, concerning Preventive Justice, or, the precautions to be

taken by magistrates for preserving the peace; the third, concerning Vindictive and Remedial Justice, or, the measures employed for punishing and redressing the breach of the peace.

THE Third Book treats of the Public Police; or those regulations which have been made, for preventing Idleness and Vagrancy, for establishing standard Weights and Measures, and respecting those other multifarious particulars, attention to which is essential, if not to the existence, yet to the health and vigour of the body politic.

UNDER the head of Rural Polity, such subjects are arranged in the Fourth Book, as seem to be connected with landed property; and, of course, necessary and interesting to country gentlemen, whether in the commission of the peace or not.

RELATING to the Army, Navy, Militia, Revenue, various duties are incumbent on the above magistrates: Under the head of Public Polity, these are the subject of the Fifth Book; which concludes with two chapters, the one concerning the Customs, the other concerning the Laws of Excise.

I HAVE endeavoured to express myself in language perspicuous to every reader. But magistrates should

know the language of the law which they administer. Technical terms, therefore, could not, with propriety, be altogether excluded. Their meaning, however, is either explained in a note, or obvious from the context.

In quoting decisions from printed books, I generally mention my authority. Where, again, they have either been taken down by myself, or communicated to me by my professional friends, I have almost always had an opportunity of perusing the printed papers, and seldom omit giving the precise words of the decree. The only printed reports of the decisions of the criminal courts are, Mr. Maclaurin's (Lord Dreghorn) Criminal Cases, and the Collection of Trials by the late Hugo Arnot, Esq. advocate, both of which are limited in their plan. Excepting, therefore, some late decisions when I had an opportunity of being present in the Court of Justiciary myself, such as I have occasion to mention are taken either from the Books of Adjournal (Record of the Court of Justiciary), or from Mr. Hume's Commentaries on the Criminal Law of Scotland. On many occasions, indeed, which did not admit of particular acknowledgment, that esteemed performance has aided and facilitated my progress.

This Treatise is divided into text and notes. In the former, the principles of law, are stated as concisely as

appeared consistent with perspicuity and useful knowledge. In the latter, the authorities, whether decisions or statutory clauses, are generally quoted at large; from which the reader is enabled to judge of the accuracy of the statement in the text. Appendixes are added, containing such Statutes as Justices of Peace have most frequent occasion to consult, with a collection of Warrants, and other forms of Writs.

THAT the information wanted may be obtained at once, without the delay or trouble of circuitous reading, there is prefixed to each Volume a copious Table of Contents; and to the last Volume there is added a very full alphabetical Index to the Notes and Appendixes, as well as to the Text; and containing, under the articles "Act" and "Case," references, not to the whole decisions and statutes mentioned in this Treatise, but to such only as it seemed material to distinguish.

THIS plan is intended to answer two different, but equally necessary, purposes. It is intended that the text, notes, and appendixes, together, shall afford that particular information which may be occasionally necessary in real business: it is intended, again, that the regular perusal of the text alone, shall give the magistrate that general acquaintance with the whole range of his powers; without

which, he cannot discharge his duty either with satisfaction, or credit, or safety; even though he may have the amplest and most accessible magazine of legal information, lying on his desk, to consult occasionally.

THAT either object has been completely attained, it would be great presumption to imagine. Amidst such multiplicity, there must be both inaccuracies and omissions. This only may be safely said, that nothing which appeared to be useful or necessary has been intentionally omitted; while every thing that seemed likely to discourage the general reader from the regular perusal of the text has been carefully excluded from it; the detail of authorities, statutory quotations, and *minutiæ* of decided cases, which even professional readers find tedious and irksome, being generally inserted in the notes.

IF I have not succeeded in the latter object, the fault cannot be imputable to my subject. In an inquisitive and intelligent age, when few branches, even of abstruse science, are any longer exclusively confined to the schools, is there any thing in the subject, at least, that should limit to professional readers the regular perusal of a general view of some important parts of our municipal institutions? Every person is bound, as well as interested, to acquire some knowlegde of the laws by which he is governed: Besides, jurisprudence, more than almost any other depart-

ment of study, is connected with general literature, with the science of the individual and of the species, as well as with the national manners, history, and antiquities.

BUT there are peculiar incentives to undertake a work intended for the perusal of the country gentlemen of Scotland: Their attention to legal knowledge is observed both by Sir William Blackstone[a], and by the late Prime Serjeant Browne[b] of the Irish bar, as an example worthy of imitation.

FROM the variety of subjects, contained in this Treatise, it will appear, that the discharge of important duties is expected from country gentlemen. Under free constitutions, the interest of the crown and its subjects can never be opposite[c]. Private individuals, therefore, without risk or jealousy, may be intrusted with the execution of public functions. Hence the inclination of the British monarchy to dispense the blessings of law and government, as well as to maintain the national defence, by the gratuitous instrumentality of the nobles and gentry. By the upright and able discharge of those functions, they cherish in the minds of the lower orders that spirit of subordination and respect-

[a] Comment. Introd. p. 3.

[b] Lectures on the Civil Law, Pref. and Lect. i, 12.

[c] King William's Letter to the Estates of Scotland; Scots Acts, Vol. iii, p. 187, small edition.

ful attachment to rank, which is the strongest tie of the social union; and thus promote the influence and consideration of their own order, while they render essential service to the community. Whereas, on the other hand, even by declining those offices, it is in vain for the landed proprietor to flatter himself with the hope of escaping altogether from the sphere of public usefulness. As an *heritor*, merely, the law reaches him; and, under that appellation, as we shall see, calls him to the performance of various duties: So deeply is a reliance on the spirited exertions of country gentlemen interwoven into our laws and constitution.

In Scotland, indeed, there can be no apology for any gentleman wishing to decline the office, in particular, of Justice of the Peace, supposed to be the most difficult and troublesome, as it is the most important. The most burdensome part of the duty of the English Sessions of the Peace is here almost entirely devolved upon the Sheriff, whose office in England is merely ministerial.

Every assistance, however, is due to gentlemen in the gratuitous discharge of public duties. In England, William Lambard of Lincoln's Inn, published his famous *Irenarcha* in the reign of queen Elizabeth; Michael Dalton of Lincoln's Inn, published

"the Country Justice," in the reign of James I; and lastly, the late Dr. Burn, his "Justice of the Peace and Parish Officer," in the reign of George II. There are several other English writers on the same subject, besides those three standard authors.

In Scotland, Mr. William Forbes, advocate, about the beginning of the last century, published a small volume, entitled, "The duty and powers of justices "of the peace in this part of Great Britain called "Scotland." It contains little more than an abstract of the two general statutes 1617, c. 8, and 1661, c. 38, and some observations concerning the customs and excise, which are little adapted to the present state of those branches of our law. Even at the time his book was written, it could not be considered as a complete guide to justices of peace; and what changes in the laws have since taken place may be easily imagined.

A report generally prevails, that the late Andrew Crosbie, Esq. advocate, had prepared for the press a work concerning justices of peace. But the only work, Mr. Crosbie had completed, was a large commentary on the act 1701, "for preventing wrongous imprisonment." Afterwards he included in his plan the general doctrine concerning statutory offences, the revenue laws, and indeed most of those statutes the execution of which is intrusted to justices of peace. The manuscript was in the hands of a bookseller, but returned

for farther alterations. Mr. Crosbie did not live to finish, at least, the additional part. Since his death, this work has not been traced; although the commentary on so popular and valuable an enactment as the statute 1701, which must have involved the discussion of many interesting principles of criminal and constitutional law, would be received with avidity from the pen of that celebrated lawyer.

The late lord Gardenstone, some years before his death, began a work on the office of justice of the peace, on an extensive scale, in the form of a dictionary, and continued it to the letter O. Of this manuscript, which is in the possession of Francis Garden, Esq. of Troup, I have been favoured with the use, and have thus had the pleasure of recording some of the legal opinions of that able and intelligent judge.

The late Archibald Murray, Esq. of Murrayfield, who, from the records of the Sessions for the county of Edinburgh, appears to have been, for many years, a very active Justice of Peace, drew up a short summary of the duties of this magistracy, under the title of "the "Scots Justice of Peace *Vade mecum*." This manuscript was obligingly communicated to me by his grandson John Alexander Murray, Esq. advocate. And Lord Woodhouslee did me the favour to put into my hands a printed summary, on a larger scale,

drawn up for the county of Inverness, by himself and Simon Fraser, Esq. the sheriff-depute.

In 1788, a work in two volumes, quarto, was published, under the title "the Office, and Power, and "Jurisdiction of Justices of the Peace, and Commissioners of Supply," by Dr. Boyd. Of this performance I shall say nothing; because, had there been any hope of rendering it useful, by such alterations as it is allowable to make on the work of another, the present publication would never have been thought of.

A TREATISE, such as this is intended to be, appears thus to be necessary. As I have not the advantage of being myself personally conversant in the execution of any of the offices here treated of, much pains have been taken to supply my deficiency in practical knowledge. The books of the sessions of the peace for the county of Edinburgh, have been regularly kept from the beginning of the last century. For many years the sederunts were usually attended by the Crown Counsel, and several Senators of the College of Justice. These records I perused regularly, and made such extracts as I thought would be useful in this work. In the records of the court of justiciary I had an opportunity of seeing those cases, where the sen-

tences of justices of peace, in the exercise of their criminal jurisdiction, had come under the review of that court; and many of the recorded pleadings contain much learning and able disquisition concerning this magistracy. Farther, very particular queries, concerning the practice and forms of procedure, were transmitted to the clerks of the peace of the several counties: From every quarter, and almost every county of Scotland, I have been favoured with distinct, intelligent, and copious answers. These, for which my sincere thanks are due, have afforded me the best possible materials for giving a safe and correct view of a difficult subject on which there is no printed information. Likewise to my friends at the bar, who, as sheriffs, justices of peace, and country gentlemen, have occasion to know the practice of their respective counties, I owe many oral, and some written communications, which materially aided me in this part of my subject.

To Robert Hamilton, Esq. advocate, I am indebted for being able to present to the reader Oliver Cromwell's Instructions to Justices of Peace, which could not be found either in the public Records or in the Advocates Library; and for every other assistance that could be afforded me from his valuable collections concerning the laws and history of Scotland.

indebted to James Clerk, Esq. sheriff-depute of the county of Edinburgh for information, which was of essential use in some of the most important practical chapters of the work.

THE chapter concerning the regulations for the maintenance of the poor, being a subject connected with ecclesiastical law and practice, was perused by the reverend Sir Henry Moncrieff Wellwood, Baronet, and by the reverend Dr. Finlayson, who did me the favour to communicate to me their remarks in writing.

IN the Laws of the Customs and Excise, from the multiplicity and frequent change of enactments, accuracy is not easily attained. The two chapters concerning these subjects, and such passages as relate to the Stamp Acts, were revised by gentlemen of official experience in their respective departments.

THE chapter concerning the Small Debt Act, that concerning Masters and Servants, and most of the chapters of the Fourth Book, and the Appendix of Stiles, were revised by Mr. William Macfarlane, clerk to the signet, to whose acquaintance with the whole routine of the business of a justice of peace, and commissioner of supply, I have been much indebted in the course of this work.

IF I flatter myself, that my errors and omissions are not numerous or material, it is on these aids I rely; and, especially, upon the regular revisal of the whole work, sheet by sheet, without one exception, by the Right Honourable Judge, under the sanction of whose name I have the honour to present it to the Public.

EDINBURGH,
7th January 1806.

CONTENTS

OF

THE FIRST VOLUME.

BOOK I, OF THE OFFICES IN GENERAL, 1, 331.

CHAP. I. *OF JUSTICES OF PEACE IN GENERAL*, 1, 60.

§. 1, KEEPERS OF THE PEACE, 1, 5;

By office, 2; by prescription, ib; by charter, 4; courts, ib; magistrates, ib.

2, DEFINITION OF JUSTICES OF THE PEACE, 5, 7.;

Commissioners, 5; justices, ib; judges of record, 6; of peace, ib.

3. HISTORY OF THE OFFICE, 7, 16.

Whence derived, 7; ancient keepers of the peace, ib; act 1609, c. 7, ib; hereditary jurisdictions, ib; their evils, 8; introduction of this magistracy into England, 9; its progress in Scotland, 10; 1617, c. 8, the first general code on this subject, ib; 1633, c. 25, 11; Oliver Cromwell's instructions, ib; act 1661, c. 38, 12; appointment of justices and constables in each shire, ib; act 1685, c. 16, ib; act 1690, c. 28, 13; articles of the union, ib; queen Anne's proclamation, ib: Anne, c. 6, gives them the power of English justices, touching the peace, 14; how this enlarged their powers, ib.

4, COMMISSION OF THE PEACE, 16, 30;

First assignment of justices by statute, 16; reformation of the commission, ib: explanation of it, 17; salutation, ib; why in the king's name, ib; by the grace of God, ib; of the united kingdom, &c. 19; king, 21; emperor, 22; general nomination, 23; how addressed, ib; why in the plural, 24; first as-

signment, ib; second assignment, 26; subscription clause, 30.

§. 5, QUALIFICATION OF JUSTICES OF PEACE, 30, 32.

6, OATHS TO BE TAKEN BY JUSTICES, 32, 39.

Writ of *dedimus potestatem*, 33; oath of allegiance, 34; assurance, 35; abjuration, 36; supremacy, 37; If taken only once, 38.

7, QUORUM OF JUSTICES, 39.

8, PAYMENT OF THE JUSTICES, 39, 40.

What justices, 39; when punishable by fine for non-attendance, 39; expence incurred in extra-sessional business, 40.

9, EXPIRATION OF THE OFFICE, 40, 45.

10, OFFICERS OF THE JUSTICES, 41.

Clerk, 41; must he be a notary, ib; duty of the clerk, 42; collector, 44; procurators before the justices, 44; constables, 45.

11, DIVISION OF COUNTIES INTO DISTRICTS, 45.

Persons living out of the district, 45; officers for the district, ib.

12, CAN JUSTICES ACT WITHIN LIBERTIES, 46.

13, CAN THEY ACT BEYOND THEIR JURISDICTION, 47, 50.

Ministerial acts, 48: compulsitory jurisdiction, 50; statute 28 George III. c. 49; two adjoining counties, 49; execution of a warrant so granted, ib; 24 Geo. II. c. 55, as to indorsation of warrants, 50; terms of the warrant, ib; tenants fraudulently removing their goods, ib; levying distress, by 33 Geo. III. c. 55. ib.

14, CAN A JUSTICE OF PEACE ACT IN WHAT RELATES TO HIMSELF? 51.

16. Geo. II. c. 18. 51. Exception, 52.

15. JUSTICES OF THE PEACE WHEN PUNISHABLE, 58. 60.

Lenity towards them, 55.

CHAP. II. *OF THE SESSIONS OF THE PEACE*, 61, 102.

§. 1. THEIR CONSTITUTION AND POWERS IN GENERAL, 61, 74.

Court of Record, 62; how many constitute a sessions, 64; one of the *quorum*, ib.; for execution of their general duty, ib.; quarter sessions, 65; times of meeting, ib.; if no *quorum*, ib; general quarter sessions, ib.; special sessions, ib.; place of meeting, 66; mode of calling a session, ib.; convener, ib.; at what time is it unlawful for the sessions to meet, 67; payment of the justices, ib.; freedom of access to the sessions, ib.; the sessions if equally divided, 73; can they refer? ib.; taking of proofs, 74; justices if punishable for what is done in sessions, ib.; what officers attend, ib.

2, ORDER OF BUSINESS, 75, 77.

3, PROSECUTORS, 77, 85.

Private prosecutors, 77; special interest, ib.; who cannot pursue? 78; outlaws? ib.; persons excommunicated? ib.; infamous? ib.; *minor* in service? 79; different pursuers in one summons? 80; more than one defender? ib.; one defender's evidence necessary to the other? 81; transference of actions, 82; what actions may be taken up by the executor? ib.; *litis* contestation, 84; do penal actions pass to representatives, 83-4; unlawful kindred, 84.

4. INSTANCE AND CONCOURSE OF THE PROCURATOR FISCAL, 85, 88.

In what actions necessary, 85; if the concourse be refused what is the remedy? ib.; concourse of the fiscal to two opposite libels? ib.; if one of two pursuers withdraw his instance, 87; if the procurator fiscal withdraw his concourse? ib.; *absolvitor* from a criminal action at the instance of the fiscal, ib.; does it prevent an action of damages? ib.; public prosecutor's privileges, 88.

§. 5. DEFENDERS, 88, 92.

Nobleman, 88; tutor or husband when parties, 89; insane persons, ib; transference of actions, ib; actions *rei persecutoriæ*, 90; penal, ib.; criminal. 92.

6. *FORUM*, 93, 102.

Jurisdiction, 93; citation, ib.; domicile, ib.; houses in two jurisdictions, 94; travelling merchant, ib.; soldier, &c. ib.; offences committed out of the jurisdiction where the offender resides? 95; out of the kingdom, 96; *forum deprehensionis*, 100; *delicti*, 101; *originis*, 102.

CHAP. III. *JURISDICTION OF THE SESSIONS*, 103, 114.

§. 1, JURISDICTION OF THE SESSIONS HOW DIFFERENT FROM JUDGES ORDINARY, 103.

2, NATURAL LIMITATION OF THEIR JURISDICTION, 103, 105.

3, INSTANCE OF A LIBERAL CONSTRUCTION OF THEIR POWERS, 105, 107.

Servants wages, 105; English cases, ib. wages of craftsmen, 106; rates of posting, 107.

4, THEIR JURISDICTION STRICTLY INTERPRETED, 107, 114.

Shooting pigeons, 107; refusal to proclaim banns, ib. scandal, 109; illegal seizure by officers of revenue, 110; civil causes, 113; prorogation, ib.

CHAP. IV, *OF THE CIVIL JURISDICTION OF THE SESSIONS UNDER THE SMALL DEBT ACTS*, 115, 145.

§. 1, SUMMARY MODE OF DECIDING SMALL CAUSES, 115, 118.

Tribunaux de conciliation, 116; baronial courts, 117;

2, CONSUETUDINARY JURISDICTION, 118, 120.

3, 35. GEO. III. THE FIRST SMALL DEBT ACT, 120.

4, GEO. III, 39, & 40. c. 46. THE SMALL DEBT ACT, 120.

Preamble, 121; obligation on justices to give regular

attendance, 122; equity and a good conscience, meaning of those terms, 124; discretion, in what sense it belongs to judges, 125; no latitude to go beyond any cause in deciding it, ib. what sort of causes do not fall under the small debt act, 127; form of the libel, 132; citation, 133; *de novo*, ib. oath, caution to be observed in allowing parties to swear, 135; no man of business to appear, 136; no evidence or pleadings in writing, ib. who subscribes the decree, 139; warrant for arresting and poinding, 139; instalments, 140; how far is the decree reviewable, 141; beneficial effects of the act, 145.

CHAP. V. *CRIMINAL JURISDICTION OF THE SESSIONS*, 146, 214.

§. 1, FOUNDATION AND LIMITATION OF THEIR JURISDICTION, 146, 151.

In England, 146; in Scotland, ib. why more limited in Scotland than in England, 147; why the Scottish sessions never employ juries, 148; 6. Ann. c. 6. 149; can the sessions try any offence which requires a jury trial, ib; &c.

2, JURY TRIAL WHEN NECESSARY, 151, 161.

History of jury trial in Scotland, 115; of old usual in civil causes, ib. when first disused therein, 125; farther alterations of the ancient law, 159; in the case of heinous offences, though the conclusion of the action be only for pecuniary reparation, 160.

3, OFFENCES COGNISABLE BY THE SESSIONS OF THE PEACE, 161, 171.

1st, Disturbances in court, or offences against the judges, 161; offences committed by the officers of court, 163; 2d, offences of which they have cognisance by the general acts, ib; 3d, consuetudinary jurisdiction in petty delinquencies, 164; pickery, ib. thefts committed by a servant against his master, ib. origin of jurisdiction in petty offences, 165.

§. 4, PUNISHMENTS, 171, 214.

Sanctions of human laws, 171; punishment, 172; the end of criminal justice? ib; damage, ib; punishment may justly go beyond indemnification, 173; chastisement, ib; reparation, ib; the magistrates title to punish, 174; division of punishments, ib.; capital punishments, mode of infliction, 176; in what cases to be inflicted, ib; banishment, 180; from borough or shire, 184, infamy, 187; pillory, 188; scourging, 189; corporal punishments if they can be inflicted without a jury trial, 190, 206; fine, 207; deprivation of office, 208; imprisonment, 209; stocks or juggs, 211; discretionary power of magistrates, 212.

CHAP. VI. *OF EVIDENCE*, 215, 267.

§ 1, EVIDENCE IN GENERAL, 215.

2, WRITTEN EVIDENCE, 216.

Public acts of parliament, ib; judicial records, 217; judicial minutes, 218; notorial instruments,—executions,—*private* 218; solemnities, ib; deeds of importance, 219; privileged deeds, 220; foreign deeds, ib.; merchants accounts, ib.; ancient facts, ib; histories, 221; surveys on public occasions, ib.; similitude of hands, 222.

3, ARTICLES EXHIBITED WITH THE CLERK OF COURT, 223,

Description in the libel, 223; articles exhibited, 224.

4, OATH OF PARTY VERITY, 224, 234.

Can it affect third parties, 225; *correi*, ib; intrinsic, ib. extrinsic, 225; in what debts competent, 227; protest for a qualified oath, ib. at what stage of the clause may a reference to oath take place ib. when may particular interrogatories take place to explain an oath, ib. in criminal cases, 228; delinquiencies, 229, penalties and corporal punishments,

230, by the act 1617, and 1661, 231; can the procurator-fiscal refer to oath, 232 oath of calumny, 233 of supplement, ib. great caution necessary in allowing the oath of supplement, 234.

§. 5, WITNESSES, 234, 267,

In what cases competent, 234; among the Romans, ib. our early law, ib.; now, 235. When payment may be so proved, ib.; attendance of, ib.; ultroneous, ib.; citation, ib; if in a foreign country, ib.; disqualifications, 236; protections, 237; English law, 238; payment of witnesses, 239; swearing of, 240; compulsory process, ib.; form of the oath, ib. quakers, 242; peers, &c. 244; sovereign, ib.; purgation *in initialibus*, 245; enmity ib.; protest for improbator, 248; proper time for objecting to witnesses, ib.; Disqualifications, 249; incapacity, 250; children, 251; infamy, ib. relationship, 253, 255. counsel and agent, 255, 256; interest, ib.; Examination of; when opinion is evidence, 258; questions, 259; explaining his evidence, ib.; if previously precognosced, ib.; examined separately, ib.; one witness, 260.

6, *CIRCUMSTANTIATE*, 261.

Presumptions, 261.

7, GENERAL RULES, 262.

Private knowledge, ib. legal evidence, 263; the best evidence, 264; *penuria testium*, ib.; hearsay evidence 265; affirmation to be proved, 266, 267.

CHAP. VII. *OF THE PROCESS*, 268, 281.

§ 1, SUMMONS OR COMPLAINT, 268, 271;

Non-appearance of the pursuer, 269; of the defender, 270; pleadings when in writing, 271; proofs, how taken, ib.; diets not temporary, ib.

§. 2, DECREE AND EXECUTION, 271;

Horning and caption, 271; acts of warding, ib.: poinding and arrestment, 272; imprisonment, ib.; aliment of a bastard, ib. extract, 274.

3, REVIEW, 275;

Defender, ib.; pursuer, ib.; public prosecutor, ib.; private, ib.; appeal to the quarter sessions, ib.; to the circuit court of justiciary, 276 advocation, 277, 278; suspension and reduction, 278; extraordinary, 279, 280, 281.

CHAP. VIII. *OF CONSTABLES*, 282, 319.

§ 1, OF THE OFFICE IN GENERAL, 282, 283.

In ancient times, 282. present duties, 283.

2, APPOINTMENT OF CONSTABLES, 283;

Fine for not accepting; oath, 283, 284.

3, THEIR POWERS AS CONSERVATORS OF THE PEACE, 284, 287;

Affrays, 284; hot words, ib.; pursuit of affrayers, 285; of a felon breaking open doors, ib.; calling for the assistance of the bystanders, 286; apprehending vagabonds, ib. deserters, ib. what is to be done after arrest, ib. may he imprison of his own authority, ib.; cannot commit for trial, ib.

4, AS OFFICERS OF JUSTICES, 287, 305;

Citation of the parties, 287; of witnesses, 296; arrestment ib.; poinding of moveables, 296, 297.

6, CRIMINAL WARRANTS, 305, 309;

Rules as to constables acting out of their respective districts, ib.; warrant to two or more jointly, ibid. assistants, 306; may he appoint a deputy, 307; notification of his errand, ib.; blazon and baton, ib.; if a known officer, 308; is a constable

obliged to part with his warrant to any one for inspection, 309.

§ 7, TAKING THE POWER OF THE COUNTY, 309, 311.
Duty of the lieges, 309; of the magistrates, ib.; restoring the goods to the owners, 310; rising of the county, ib.; punishment of those who refuse their aid, ib.; who may raise the county, 311; *posse comitatus*, when proper; who ought to join it, ib.; who are exempted, ib.

8, ARREST IN GENERAL, 312, 319.
In the night, ib.; by words, ib.; locking the door, ib.; retaking after arrest, ib.; let go on his promise to return, ib.; if he voluntarily returns, 312; what happens after arrest, 313; may the warrant be for the time departed from, ib.; if order for immediate commitment, ib.; warrant to break open doors, ib.; search for stolen goods, 314; can a private person break doors to arresting on suspicion of felony, ib.; difference betwixt a private person and constable, ib.; power of killing, ib.; in the case of a civil warrant, ib.; of a trespass or breach of the peace, 315; English law, ib.; what justifies the constable in killing, 316; right of killing in the execution of criminal warrants, 317; private persons, ib.; law of England, 318.

P. IX. *OF COMMISSIONERS, UNDER THE COMPREHENDING ACTS*, 320, 324.

§ 1, THEIR ORIGIN, 320, 321.

2, KING WILLIAM'S ACTS, 321.

3, BRITISH ACTS, 322.
Who may be comprehended, 322.

4, REVIEW, 322, 324.

CHAP. X. *OF COMMISSIONERS OF SUPPLY*, 325, 231.

§ 1, OF THE OFFICE IN GENERAL, 325.

2, NOMINATION, 325.

3, QUALIFICATION, 326.

Exceptions, 328.

4, OATHS, 328.

If not taken a nullity, 328.

5, OF THE CLERK AND COLLECTOR, 329, 330.

6, TIME AND PLACE OF MEETING, 330.

Notwithstanding an adjournment, may the convener call a general meeting, 330; if there be no convener, ib.

7, QUORUM, 330, 331.

BOOK II. OF THE PEACE, 333, 477.

CHAP. I. *OF BREACHES OF THE PEACE*, 333, 378.

§ 1. GENERAL VIEW, 333.

2, PEACE, 333.

Extensive definition, 334; its origin, 335; its more limited sense, ib.; breaches of the peace, ib.; their division, ib.

3, PUBLIC BRANCHES OF THE PEACE, 336.

Treason, 336; how far it falls under the jurisdiction of justices of peace, ib.; treason by the old law of Scotland, ib. English treason laws, ib.; treason, its seven branches, 338; *first*, compassing the king's death, ib.; new treasons, 343; method of trial for high treason, ib.; sedition, 345; punishment, 347; leasing-making, 348; sedition, in what, ib.; Queen Anne's act, declaring the punishment to be only arbitrary, 349; tumultuous petitioning, 350; as-

semblies, ib.; 36 George III. c. 8. ib.; 39 George III. c. 79, 352; exceptions, 353; free mason, ib.; penalty and method of procedure under the statute, 354; mitigation, ib.; disorderly houses, ib.; printing presses, &c. ib.; sale of types, &c. ib.; affixing the printer's name and designation, ib.; searching for suspected printing presses and types, and arresting offenders, 356; 36 George III. c. 7. for securing the king's person, 357.

§ 4. PRIVATE BREACHES OF THE PEACE, 351.

Riot act, 357; number of rioters, ib.; order to disperse, ib.; form of proclamation, 358; who may make proclamation, ib.; what justifies an order to disperse, ib.; when is the proclamation unnecessary, ib.; if it be opposed, ib.; if any of the mob be killed, ib.; what is a beginning to demolish, 359; damages due to the sufferer, ib.; is loss of furniture and other personal funds included, ib.; mobbing, 360; English law, 361; combination supposed, ib.; private object, 362; force, ib.; mere assembling, 363; art and part, ib.; punishment, 366, 367, 368; affray, 369, 370, 371; what is it? 369; by mere words? 370; if without actual violence, ib.; incendiary letters, 371, 372, 373; verbal threats, 372; duelling 373; its origin, ib. its punishment, 376, 377;

CHAP. II. *OF PREVENTIVE JUSTICE*, 379, 429.

§ 1. HISTORY OF IT, 379, 381.

Saxons, 380; Normans, ib.; Scotland, ib.

§ 2. LAWBURROWS, 381, 389.

Causes of granting lawburrows, 382; fear, if genuine, 383; penalty, ib. how incurred, 384, 385, 386; if maliciously applied for, 387; who may take out this writ; ib.

§ 3. SURETY OF THE PEACE, 389, 399.

What judges may take it? 390; whom may the

judge bind of his own motion? ib.; who may demand it? 391; against whom? ib.; oath necessary, 392; what fear necessary, ib.; manner of taking it, 393; by word, ib.; by writ, 394; offer of sureties, ib. when new sureties may be demanded, ib.; form of the bond or recognizance, 395; how long may a person be bound to keep the peace, ib.; how discharged, 395, 396; a recognizance generally to keep the peace, ib.; if it specifies the time, but no person before whom appearance is to be made, ib.; if a general sessions intervene before the time specified in the recognizance, ib.; release of a recognizance, ib.; sureties, representatives, ib.; forfeiture of the recognizance, 397.

5, SURETY OF THE GOOD BEHAVIOUR, 399.

Definition of it, 399; ancient conservators of the peace, their power respecting the good behaviour, 401, 402, 403, 404; when to be required, 400; origin of the power of English justices as to the good behaviour, ib. 401; how forfeited, 402, 403, 404.

6, PREVENTION OF CIVIL WRONG, 404, 407.

General view, 404; Roman form of beginning process, ib.; English practice, ib.; ancient practice, 405; present practice, 406; *inducia* necessary, ib.; abbey prison, 407; sanctuary, ib.; may one in the abbey be cited as a party in a criminal action, ib.; if his evidence be necessary as a witness, ib.

6, ARRESTMENT WITHIN BOROUGH, 408, 409, 410.

In what boroughs, 409; certification of wrongous imprisonment, what caution *judicio sisti*; not *judicatum solvi*, ib.; if the debtor appears, but has obtained letters of advocation, ib.; border warrants, 411, 412.

8, ARRESTMENT OF STRANGERS, TO FIX A FORUM, 412, 413, 414.

Origin of it, 412; foreign deeds, how diligence proceeds thereon, 413; does the sanctuary and sunday avail such stranger, ib.

§ 9, SUMMARY WARRANT, *MEDITATIONE FUGÆ*, 414, 429.

How granted, 413; previous examination if necessary, ib.; caution, effect of it, 416; sanctuary—sunday, ib.; evidence necessary, 417; if there appears to be no ground of applying for it, ib.; can one under caution *judicio ristii* retire to the sanctuary? ib.; if he succeeds a peerage, 421; may he retire to the sanctuary as to other creditors, ib.; a justice of peace may grant the warrant, ib.; judge ordinary, 422.

10, SUMMARY WARRANTS TO ONE FOREIGNER AGAINST ANOTHER, 422; 428.

Strangers may *be arrested*, 423; case of Wooley and Maidment, 426; of Lechmere, Tasker against Mercer, offer of caution to appear in his native Courts? 428.

CHAP. III. *OF REMEDIAL JUSTICE*, 430, 477.

§ 1, GENERAL VIEW, 430.

2, SEARCH WARRANTS 431, 435.

Upon what evidence? 431; who may grant warrant to search, ib.; form of the warrant, ib.; when granted before the crime be committed, 432; warrant to break open doors, ib.; search in virtue of 22 George III, c. 58, 433; to whom directed, ib.; search, is it in the day time only, ib.; what must the justice of peace do with the goods recovered, 434; if stolen, but not by the party, ib.

3, ARREST, 435, 439, 440.

WITHOUT A WARRANT, 435; magistrates, officers, ib.; private individuals, ib.; English law, ib.; private

individuals can they arrest affrayers and petty delinquents, 436.

By a verbal order, ib.; 437.

When a justice or other magistrate may verbally order an arrest to take place, 436; private individuals when bound to obey the personal order of the justice, ib.; of the constable, ib.

Written warrant 438; form of it ib.; before whom is he brought, ib. to whom is the warrant addressed, ib.; indorsation of the warrant, 439; warrant either for examination or immediate committment, ib.; form of those by the court of justiciary, ib.

4, PRISONERS' EXAMINATION, 440.

When it ought not to proceed? 440; not to be punished though he refuses to say any thing, ib.

5, PRECOGNITION, 440, 445.

If the examination shews the accusation to have been groundless, 440; unreasonable delay punishable, 441; citation of witnesses, ib.; may the witnesses be sworn, ib.; is the accused entitled to attend or have any person for him present? 442; if witnesses hear one another precognosced, ib.

6, WILLIAM, PARL. I, 1701, c. 6, 445.

Committment, 446; signed information, 447; its effect, 449; prisoner gets a duplicate of the warrant, 450; jailors and officers punishable, 451; method of relief, ib.

Bail, 452; crimes bailable, 454; general rules, ib. what magistrates can grant bail, 456; if the warrant be from a justice, but the crime not triable by the sessions, ib.; form of applying for bail, ib. to whom, ib.; limited time for granting or refusing it, 457; who judges of the sufficiency of the bail, ib.; terms of the bail, ib.;

Forcing on the trial, 458, 471; oppressive delays, ib; common law remedy, ib; statutory

remedy, 459; day of commencing the trial, is it counted, 467; intimation to whom, 468; if the prosecutor disobey the intimation, ib.; mode of obtaining liberation, 469; different cases resolved, ib; recommitment, ib; new criminal letters, ib.

EXCEPTIONS; treason, 472, 473 474; forgery, ib; personal diligence, ib; colliers, &c. ib; arrest to keep the peace, ib; disobedience to church censures, ib; riots, &c. ib.

PAINS of wrongous imprisonment, 474, 475.

What imprisonment means, 475, 476, 477; does it apply to private prisoners, ib; where the party in confinement is in danger of his life, he gets out on a bill of health, 477.

INDEX TO THE APPENDIX OF STATUTES.

No.		Page
I.	Copy commission of the peace,	i
II.	Do. in Latin,	v
III.	James VI. Parl. 11. 1587. c. 82. of the form how justice ayres sall be halden,	viii
IV.	James VI. Parl. 20. 1699. c. 7. concerning the commissioners and justices of peace,	xi
V.	James VI. Parl. 22. 1617. c. 8. concerning the justices and their constables,	xiv
VI.	Charles I. Parl. 1. 1633. ratification of the acts made in favour of the justices of peace and their constables; and commission to the lords of secret council thereanent,	xxix
VII.	Act concerning justices of peace, 29th June 1649,	ib.
VIII.	Oliver Cromwell's instructions to the justices of peace,	xxxi
IX.	Charles II. Parl. 1. 1661, c. 38. commission and instructions to the justices of peace and constables,	xlix
X.	Queen Anne's Parl. 1707. c. 7. act ratifying and approving the treaty of union,	lxviii
XI.	6 Anne, c. 6. an act for rendering the union of the two kingdoms more entire and complete,	lxxi
XII.	24 George II. c. 44. for rendering justices of peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrants,	lxxiii

N°. Page

XIII. 8 George I. c. 5. an act for granting the people called quakers, such forms of affirmation or declaration, as may remove the difficulties which many of them lie under, - lxxvii

XIV. 22 George II. c. 46. an act to continue, &c. and for allowing quakers to make affirmation in cases where an oath is or shall be required, - lxxxi

XV. 3 George II. c. 32. concerning the execution of sentences importing corporal punishments, - lxxxii

XVI. 20 George II. c. 43. concerning appeals from inferior courts to the circuit court of justiciary, - lxxxiv

XVII. James IV. Parl. 6. 1503. c. 98. concerning the poinding of plew utensils, - lxxxvii

XVIII. 29 George III. c. 74. § 9. concerning arrestments and poindings, - ib.

XIX. 1 George I. c. 7. riot act, - xci

XX. James VII. Parl. 16. 1698. c. 12. anent singular combats, - xcvi

XXI. William. Parl. 1. 1695. c. 35. act against duells, - xcvii

XXII. James I. Parl. 1. 1424. c. 21. concerning the peace, - ib.

XXIII. James I. Parl. 9. 1429. c. 129. concerning surety for the peace, - xcviii

XXIV. James II. Parl. 6. 1449. c. 13. of lawburrowes, ib.

XXV. James IV. Parl. 3. 1491. c. 27. of the same, xcvi

XXVI. James VI. Parl. 7. 1581. c. 117. the forme and paine of lawborrowes - c

XXVII. James VI. Parl. 13. 1593. c. 170. paines of lawborrowes, - ci

No.		Page
XXVIII.	James VI. Parl. 15. 1597. c. 273. concerning the same, - - - - -	cii
XXIX.	William, Parl. 1. 1701. c. 6. act for preventing wrongous imprisonment, and against undue delays in trials, - - -	ib.
XXX.	James I. 1424. c. 6. concerning sornares,	cix
XXXI.	James I. 1424. c. 25. age and marke of beggers, and of idle men, - - -	ib.
XXXII.	James I. 1424. c. 27. reformation of hospitales,	cx
XXXIII.	James I. 1424. c. 42. age, marke, and paine of beggers, - - - -	ib.
XXXIV.	James I. c. 103. of beggers, -	cxi
XXXV.	James II. 1449. c. 22. of the away putting of sornares, feinzed fooles, and vagaboundes,	ib.
XXXVI.	James II. 1445. c. 45. concerning sornares.	ib.
XXXVII.	James II. 1457. c. 79. of sornares, bairdes, feinzied fuiles, and maisterful beggares	cxii
XXXVIII.	James IV. 1503. c. 70. concerning beggers, and their qualities, - -	ib.
XXXIX.	James V. 1535. c. 22. beggers suld begge within their awin paroch, and have the marke thereof, - -	ib.
XL.	James VI. Parl. 6. 1579. c. 74. punischment of strang and idle beggers, and reliefe of the pure and impotent, - -	cxiii
XLI.	James VI. Parl. 12. 1592. c. 149. punishment of maisterful beggares, and relief of the pure, - - -	cxxi
XLII.	James VI. Parl. 15. 1597. c. 272. strang beggers, vagabounds, and Egyptians suld be punished, - -	cxxiii
XLIII.	James VI. Parl. 16. 1600. c. 19. ratification of the act concerning strong and idle beggers, - - -	cxxiv

N°.		Page
XLIV.	James VI. Parl. 20. 1609. c. 13. concerning gypsies, - - -	cxxvi
XLV.	James VI. Parl. 20. 1609. c. 14. -	cxxvii
XLVI.	James VI. Parl. 22. 1617. c. 10. anent the poor, - - -	cxxviii
XLVII.	Charles II. Parl. 1. 1663. c. 16. concerning beggers and vagabonds, -	cxxx
XLVIII.	Charles II. Parl. 2. 1672. c. 18. for establishing correction houses for idle beggars and vagabonds, - -	cxxxi
XLIX.	Mary, 1551. c. 25. concerning beggars,	cxxxix
L.	William and Mary, 11th August 1692, first proclamation of the privy council anent beggars, - - -	cxl
LI.	William and Mary, 29th August 1693, second proclamation concerning ditto,	cxlv
LII.	William and Mary, 31st July 1694, third proclamation concerning ditto, -	cxlvii
LIII.	William, 3d March 1698, fourth proclamation anent the poor, - -	clxviii
LIV.	George III. c. 92. 20th July 1804, for the more easy apprehending and bringing to trial offenders escaping from one part of the united kingdom to the other, and also from one country to another, -	cli
LV.	George II. c. 5. 1741. act to amend and make more effectual the laws relating to rogues, &c. and to houses of correction,	clv
LVI.	26 George II. c. 6. for preventing the plague being brought from foreign parts into Great Britain or Ireland, &c. -	clxxxi
LVII.	39 George III. c. 80. for erecting a lazaret on Chetney hill, - -	cxcvii

N°.		Page
LVIII.	William and Mary, Parl. 1. 1689. c. 3. abolishing prelacy, - -	ccxvii
LIX.	William and Mary, Parl. 1. sess. 2. 1690. c. 1. act rescinding the first act of the 2d parliament 1669, - -	ccxviii
LX.	William and Mary, Parl. 1. sess. 2. 1690. c. 2. act restoring the presbyterian ministers who were thrust from their churches since 1st January 1661, - -	ib.
LXI.	William and Mary, Parl. 1. 1690. c. 5. act ratifying the confession of faith, and settling presbyterian church government,	ccxix
LXII.	William and Mary, Parl. 1. 1690. c. 27. act rescinding the laws for conformity,	ccxxiij
LXIII.	William III. Parl. 1. 1695. c. 12. act against irregular baptisms and marriages, -	ccxxiv
LXIV.	William III. Parl. 1. 1698. c. 6. act against clandestine and irregular marriages,	ccxxv
LXV.	43 George III. c. 151. concerning cotton weavers in Scotland, - -	ccxxvi
LXVI.	39 George III. c. 55. concerning the redemption of the servitude of thirlage,	ccxxxix
LXVII.	43 George III. c. 54. concerning parochial schoolmasters in Scotland, -	ccxlv
LXVIII.	45 George III. c. 10. concerning the effectual performance of quarantine, -	cclv
LXIX.	45 George III. nominating commissioners for levying the land tax, - -	cclxxvi

TREATISE

ON THE

OFFICES

OF

JUSTICE OF THE PEACE, AND COMMISSIONER UNDER CONSTABLE, [WHAT ARE CALLED THE COMMISSIONER OF SUPPLY,] COMPREHENDING ACTS,

IN SCOTLAND.

BOOK I.

OF THE OFFICES IN GENERAL.

CHAP. I.—*Of Justices of the Peace in general.*

THE sovereign is the principal conservator of the peace, by virtue of the royal dignity [a]. The personal administration of law is said to have been originally in the crown, the fountain of justice, from whence courts and magistrates, either mediately or immediately, derive all their jurisdictions. § 1. King, by the royal dignity.

BUT the king cannot take a recognisance or security for the peace, because it is a rule that no recognisance can be

[a] *Principalis justiciarius.* Lambard's Eirenarcha, book 1. c. 4 Bacon's Abridge. tit. Justices. Dalton's Country Justice, ch. 1.

§ 1. KEEPERS OF THE PEACE.

taken unleſs by a juſtice either of record or by commiſſion. In like manner, though law be ſtill adminiſtered in his name, he cannot decide any cauſe but by his judges, to whom he has committed the whole of his judicial authority [b].

by office.

SOME offices give a general authority to keep the peace throughout the realm. Such, according to the Engliſh lawyers, are the offices of lord chancellor, lord keeper of the great ſeal, the lord high ſteward of England, the lord marſhal, the lord high conſtable, the lord treaſurer, and every juſtice of the king's bench. The maſter of the rolls has it only by preſcription [c].

by preſcription.

So far as theſe are merely *Engliſh* offices, they confer no ſuch authority in Scotland, which is under the juriſdiction of its own laws, and magiſtrates, and courts of juſtice [d]. The

[b] So much is this the caſe, that the ſtatute Charles II. 1681, ch. 18, which, "conſidering that all government and "juriſdiction does *originally reſide in his* "*ſacred majeſty*, declared that his ſacred "majeſty may *by himſelf*, or any com- "miſſioned by him, take cogniſance "of any caſes or cauſes he pleaſes," was complained of as a grievance by the convention of eſtates 1689, and repealed.

David I. ſat perſonally in court, and is celebrated for his wiſdom in deciding cauſes, Buch. Hiſt. lib. vii. It was part of the duty of the chiefs of the northern nations to preſide at judicial trials; a fact conſiſtent with the power of juries, and the freedom and importance of the people, under the conſtitutions of the ancient Goths. Edin. Tranſactions. *Eſſay on the origin and ſtructure of European governments.*

[c] Bac. Abr. tit. Juſtices. Burn's ib.

[d] It is ſurpriſing to find in ſo reſpectable a book as Comyn's Digeſt of Engliſh Law, (tit. Scotland) the following paſſage, without remark or correction from the learned editor of the laſt edition 1800: "Scotland was held of "the king of England, and is within "the fee and ſeigniory of the king of "England." And as if it were a municipal queſtion of Engliſh law, an appeal is made to the authority of an Engliſh law book, Plowden's Commentaries.

But this exploded claim of homage and ſovereignty, which received its refutation from Craig, and, in the laſt age, when again revived, provoked the zealous patriotiſm of ſeveral champions of Scottiſh independency in church and ſtate, is not even contended for by Lord Lyttleton, their lateſt writer, except to the ſouth of the Forth; and how far his Lordſhip was from eſtabliſhing it this length, is ſhown by Sir David Dalrymple, (Lord Hailes). Remarks on the Hiſtory of Scotland, chap. ii. and Annals of Scotland, Appendix ii. No. 1.

§ 1. KEEPERS OF THE PEACE.

lords of juſticiary, ſucceſſors of the ancient juſticiar, ſo formidable in feudal times, are general conſervators of the peace, and grant warrant to apprehend delinquents throughout all this part of the united kingdom. The judges of the court of ſeſſion, which ſucceeded the daily council, a committee of parliament, are, together with his majeſty's privy counſellors, the lord advocate, and ſome other perſons of rank and dignity [e], always included in the general nomination of juſtices of peace over all Scotland [f]. Neither ſecretaries of ſtate [g], nor peers as ſuch, are conſervators of the peace.

[e] See § 4.

[f] As this nomination alſo includes the lords of juſticiary and others, who, independently of it are, like the judges of the king's bench in England, conſervators of the peace, *virtute officii*, it is not of itſelf deciſive evidence that the ſame is not the caſe with the lords of ſeſſion, who, when ſitting in court, not only are the ſupreme civil tribunal, with equitable powers, reſembling thoſe of the lord high chancellor in England, but had anciently a very extenſive criminal juriſdiction and ſuperintendence, and ſtill exerciſe it to a certain degree, particularly in offences againſt the public police, as well as are in the daily practice of granting lawburrows, a ſpecies of ſecurity of the peace. (See B. ii. c. 2.)

Accordingly, in the late caſe of James Reid, who was impriſoned by order of the judge of the high court of admiralty, (not a juſtice of peace by commiſſion) amidſt other topics of argument from the bar, it was ſtated, by counſel of high eminence, that the nomination of the lords of ſeſſion in the commiſſion was not neceſſary to give them a charge of the peace, which they had *virtute officii*, but merely to inveſt them with thoſe miniſterial powers relative to highways and other matters which are by ſtatute annexed to the office of juſtice of peace.

This caſe of Reid turned chiefly on two points: the import of the power of courts of juſtice to keep peace within their own precincts, and how far the judge can act in the caſe of an offence againſt himſelf perſonally. Papers were ordered, and ably drawn on both ſides, but the cauſe having been dropped, there was no opportunity of obtaining the opinions of the bench upon theſe queſtions in this intereſting branch of juriſprudence, which, in this country, has not yet, from ſucceſſive judgments, attained to the ſame preciſion and maturity as in England.

[g] Whether ſecretaries of ſtate are juſtices of peace, was debated in the caſe of the warrant granted by lord Halifax to ſearch for the authors, printers, and publiſhers, of No. 45 of the North Briton. That warrant was found to be illegal upon the more intereſting point of general warrants.

§ 1. KEEPERS OF THE PEACE.

THE biſhop of Ely, the archbiſhop of York, the biſhop of Durham, are keepers of the peace within their reſpective bounds, by the ſtatute of 27 Henry VIII. c. 24. The magiſtrates of ſome royal burghs, as Edinburgh and Aberdeen, are conſtituted heritable juſtices of peace within their liberties, by their charters ratified in parliament [h]. All courts of juſtice as ſuch have power to keep the peace within their own precincts [i]. Every ſheriff alſo is a principal conſervator of the peace of his county. The magiſtrates of every royal burgh have the charge of the public peace, and authority to repreſs and puniſh offences againſt the quiet and good order of the community. Conſtables, whether high or petty, are conſervators of the peace within their reſpective diſtricts. Among theſe offices the Engliſh lawyers mention that of coroner; but in this country, though the name of hereditary coroner ſtill adorns the titles of ſome ancient families, yet the office having long ago loſt all its power and juriſdiction, gives no charge of the peace [k].

by ſtatute.

by charter.

Courts.

Sheriffs.

Magiſtrates.

Coroner?

[h] Forbes's Juſtice, part ii. p. 2.

[i] 2. Hawkin, P. C. 33.

[k] So much had this office dwindled from its ancient importance into mere *vox et preterea nihil*, that it was not thought neceſſary to include it in the ſtatute 20. Geo. II. relative to the purchaſing of the heritable juriſdictions. On this ground the court of ſeſſion diſmiſſed a claim for a compoſition of 500l. ſterling made by the heritable coroner of the ſhires of Forfar and Kincardine, February 1748.

In the caſe of any crime, it was the duty of the coroner to employ meaſures (even by raiſing the county) for ſecuring the felon; take ſummary cognition of the crime; arreſt the perſons, and ſometimes the goods of perſons to be tried; and preſent them to the juſtice-ayre, of which he was a neceſſary attendant. He had a proportion of the fines and forfeitures with the ſheriff and king's bailie. Leges Malcomi, cap. 3, 15. Alexan. II. c. 25. James III. parl. 14. c. 102, 103, 115. James V. parl. 3. c. 5. parl. 4. c. 34. James VI. parl. 11. c. 82. See alſo the paper publiſhed by Mr. Prynne (that painful and judicious antiquary, as Blackſtone terms him) in his Collection of Records in the Tower, vol. iii. p. 1051. and intitled, "Ordinatio "facta per Dominum Regem ſuper "ſtabilitate Terræ Scotiæ." This curious document illuſtrates the nature and importance of this office, ſo early as the reign of Edward I. and as Mr. Prynne's work is not eaſily to be had that record is inſerted in the Appendix, III.

At what period the office became extinct appears not ſo certainly. Mr. Pinkerton ſays, "the crowner, or coroner,

THE ordinary juſtices of the peace are named in the king's commiſſion for their reſpective counties. § 1.

II. JUSTICES of the peace, in the language of our ſtatutes, are "Godlie, wyſe, and vertuous gentlemen, of good qua- "lity, moyen, and report, making reſidence within their "reſpective ſhyres, appointed by his majeſty for keeping "his majeſty's peace [l]." According to the Engliſh lawyers, they are judges of record appointed by the king, to be juſtices within certain limits for the conſervation of the peace, and for the execution of things entruſted to their charge by the commiſſion and particular ſtatutes [m]. DEFINITION OF JUSTICES OF PEACE.

THEY are named *commiſſioners* of the peace, having their authority by the king's commiſſion [n]; and *juſtices*, to remind them to do juſtice, which is to yield to every man his own, Commiſſioners. Juſtices.

[a] continues to attract notice even in "the reign of James V. with which his "ancient office ſeems to expire." (Hiſt. of Scotland, v. i. p. 285.) But if it no longer attracted the notice of the general hiſtorian, yet, after that period, it is treated of by preſident Balfour, in his Practics, (p. 566, 567.) and by Sir John Skene, in his work of Crimes and Criminal Judges (c. 7—16,) as a conſtituent part of the judicial ſyſtem ſtill in actual exerciſe. With other heritable juriſdictions it was aboliſhed by Cromwell; and though it was revived by Charles II. it never appears to have recovered the exerciſe of its various important lucrative powers; which in part had devolved on the new inſtitution of juſtices of peace, and in part were ſuperſeded by the eſtabliſhment of the preſent court of juſticiary, which entirely changed the method of adminiſtering criminal juſtice, and iſſued its writs to macers of court, and meſſengers at arms; while the buſineſs of the circuit courts was prepared by the ſheriff. Thus were the coroners gradually ſupplanted: but they did not yield without complaint and proteſtation, as we are told by Sir George Mackenzie in his Obſervations on act 1528. c. 5. "by which the Porteous "roll was to be delivered to the coro- "ner, but now (ſays he, p. 126) it is "generally delivered to the ſheriff "when juſtice-ayres are held." In his Criminal Law, he ſays, "the of- "fice is obſolete now, except at juſ- "tice-ayres, when the coroner yet "preſents all malefactors, and takes "them to and from priſon." Even this alſo fell into diſuſe. In ſome late election queſtions, the nature and hiſtory of this ancient office attracted attention, and was inveſtigated with much ability and reſearch.

[l] Parl. 20. Ja. VI. 24. June 1609. c. 7.

[m] Dalt. ch. 2. Burns tit. Juſtices.

[n] Dalt. ib. James VI. 1617. c. 8.

§ 2. DEFINITION OF JUSTICES OF PEACE.

according to the laws, cuſtoms, and ſtatutes, of this realm, without reſpect of perſons [o].

Judges of record.

THEY are deſcribed as *judges of record*. Hence a record or memorial made by the juſtices of the peace of things done before them judicially, in the execution of their office, is ſaid to be of ſuch credit that it ſhall not be contradicted. "For if men ſhould be admitted," ſays Dalton, "to deny the ſame, there never would be any end of controverſies; and therefore, to avoid all contention, while one ſaith one thing, and another ſaith another thing, the law repoſeth itſelf wholly and ſolely in the report of the judge [p]." Great cauſe therefore, he adds, have juſtices of peace to take heed that they abuſe not their credit, either to the oppreſſion of the ſubject, by making an untrue record, or to the defrauding of the king, by ſuppreſſing the record that is true and lawful [q].

Records, why they bear faith.

Peace, what is it?

THEY are juſtices of the *peace*, which has been defined to be "the confidence and quiet that is between men [r]." As human laws, however, extend not to the mind and con-

[o] Dalt. ch. 2. Car. ii. 19, 6, 7.

[p] Dalt. c. 70. The Engliſh lawyers term *every* juſtice of peace a judge of record, and draw the concluſion, that if *a* juſtice of the peace certify to the king's bench that any perſon hath broken the peace in his preſence, upon this certificate ſuch perſon ſhall be there fined, without allowing him any traverſe thereto. (Burns tit. Juſtices.) Notwithſtanding the act of queen Anne, giving the powers of Engliſh juſtices to thoſe in Scotland in matters touching the peace, it is not ventured to ſtate either the definition or its conſequence, with reſpect to *one* juſtice, to our law. If it really of peace could certify the guilt of the moſt reſpectable perſon of the community to the king's bench, or other court, who muſt proceed to inflict the puniſhment, without admitting the accuſed to prove his innocence or *alibi*, &c. is what is little reconcileable to legal practice or opinions. though we ſo far qualify it, as to apply it to *juſtices*, that is, a court of ſeſſions of the peace, yet what difficulties, even in that view, the adoption of the definition, ſee chap. 3.

[q] Lamb. Eiren. b. 1. ch. 1. c. 70. Burns v. Juſtices.

[r] Fitz. Juſtice of Peace,

ſcience, but only to the body, hands, and weapons, ſo peace in our law is rather the reſtraining of hands than the uniting of minds; and is taken for an abſtinence from actual and injurious force or violence moved againſt the perſon of another, his goods, lands, or other poſſeſſions [f]. § 2.

III. THE name and office of juſtices of peace are derived by our lawyers from the Irenarchæ, appointed by the Roman governors to preſerve the peace of their provinces. Notwithſtanding our acknowledged devotion to the civil law, we did not early adopt this branch of their policy. The turbulent ſtate of Scotland for ages certainly required, could feudal pride and tyranny have endured, ſuch an inſtitution as this. In thoſe days the conſervation of the peace was not the charge of a peculiar magiſtracy, but only annexed to certain feudal juriſdictions, which diſplayed the pageantry of office, without its efficacy, and were no leſs troubleſome and formidable to the ſovereign, than odious and oppreſſive to the people; but yet, from a combination of cauſes, the pecuniary difficulties of the crown, and the wants of favourites, were multiplied beyond all tolerable bounds, in ſpite too of a regular ſyſtem, for checking and limiting them, that ſeems in no reign to have been totally out of view.

HISTORY OF THE OFFICE.

Whence derived.

Who had charge of the peace before the inſtitution of juſtices in this country.

A STRONG picture of the melancholy ſtate of ſociety under that plan of adminiſtering juſtice, appears in the narrative of our two earlieſt enactments touching the inſtitution of juſtices of the peace, parl. James VI. 1587. ch. 82. and 1609. ch. 7; the latter of which, in particular, mentions the brutal and barbarous cuſtom "of deadlie feads, whilk, by the "inveterate abuſe of many paſt ages, was become ſa frequent "in this realm, as the ſubjects of greateſt rank and quality, "upon every naughtie occaſion of baſe and unworthie con- "troverſies of neighbourhood, for turves, fold-dykes, furres

Act 1609, c. 7. Narrates the evils of hereditary juriſdictions.

[f] Dalton's Country Juſtice, ch. 3. See alſo farther upon this ſubject below, Book 2. ch. 1.

§ 3. HISTORY OF THE OFFICE.

" or marches of lands, fooliſh words or drunken diſcords " between their meaneſt ſervants and dependers and any " other in the country, did ſo readily embrace the protec- " tion of their unjuſt and unneceſſary quarrels, as did many " times involve themſelves and their hail friendſhip in maiſt " bloudie and mortal troubles, whilk they did proſecute " with ſik malice and cruelty as to the extreme peril of " their ſaules, infamie of their memorial, and overthraw of " their awne and their adverſaries houſes, did diſtract the " kingdom in oppoſite factions, and many tymes furniſhed " matter of maiſt pernitious, ſeditious, and civil warres."

IT is farther added that this " corruption was ſo univer- " ſal, that the greateſt part prevailing againſt the beſt, cruel " barbarity hath both continuance and daily increaſe, until " his majeſty, bending the excellent graces of his royal " mind wherewith God has endowed him," &c. It then aſcribes theſe evils to the neglect of the magiſtrates who had the charge of preſerving the peace: " His majeſty con- " ſidering that nothing gave ſa great grouth and ſtrength " to that bypaſt barbaritie as *the ſlouth of magiſtrates, in* " *not ſuppreſſing the firſt ſeeds of theſe diſſentions, whilk being* " *ſmall and weak in* the beginning, for peets, turves, devits, " fold-dykes, poinding, neighbourlie marches, injurious " words or light brawls were then eaſily to be ſettled, if

Cauſe of the evils complained of.

" diligence and authority had been joined for repreſſing " whereof, whilk being neglected by theſe to whom it ap- " pertained, theſe light jarres and inſolences did very often " kindle ſik flames of diſorder, diſſention, rankor, and feed, " as in many years with great ſtreames of bloud, deſolation " and ruin of great and ancient houſes and races, could " hardly be quenched; for remeed whereof," &c. And therefore, in order to ſtrike at the root of theſe evils, the ſtatute proceeds to the inſtitution of juſtices of peace. " Sta- " tutes and ordeins, that in every ſhire within this kingdom, " there ſhall be yearly appointed by his majeſtie ſome godlie,

§ 3. HISTORY OF THE OFFICE.

" wiſe, and vertuous gentleman of good quality, moyen, " and report, making reſidence within the ſame, in ſik num- " bers as the bounds of the ſhire ſhall require, to be com- " miſſioners for keeping his majeſty's peace, to whom his " majeſty, with advice of the lords of his privy council, " ſhall give power and commiſſion to overſee, try, and pre- " vent all ſik occaſions as may breed trouble and violence " amongſt his majeſty's ſubjects, or forceable contempt of " his majeſty's authority, and breach of his peace. And " to command all perſons in whom they ſhall ſee manifeſt " intention to make trouble or diſorder, either by gathering " together of idle and diſorderly perſons, or by public bear- " ing or wearing of piſtolet or other forbidding weapons, " and ſik other riotous and ſwaggring behaviour; to bind " themſelves, and find caution under competent pains, to " obſerve his majeſty's peace, and for their compearance " before his majeſty's juſtice, or lords of his privy council, " to underly ſik order as ſhall be found convenient for " puniſhing their tranſgreſſions, or ſtaying of troubles and " enormities; and if need ſhall be, to require the dutiful " and obedient ſubjects of the ſhire to concur with them in " preventing all ſik contempts and violences, or for taking " or wairding of the wilful and diſobedient authors, com- " mitters, and forſterers of theſe crimes and diſorders, un- " der ſik competent arbitrarie pains as his majeſty and lords " of his privy council ſhall appoint for the offenders; and " ſik of the country as being required ſhall not give their " ready and afald concurrence to his majeſty's commiſſioners " in the premiſes, whereby the ordinary magiſtrates and " officers within the ſhires may be the better aſſiſted, and " their abſence, employments, or other impediments mair " commodiouſly ſupplied, without derogation of their juriſ- " diction, or want of ready comfort and juſtice to the " obedient ſubjects within the bounds thereof."

As a cure for thoſe evils deviſes the inſtitution of juſtices of peace.

THIS magiſtracy had been adopted in England earlier, Introduction into England.

§ 3. HISTORY OF THE OFFICE.

where it ſoon proved of ſuch utility and importance as to draw from Sir Edward Coke[t] this eulogy: "The whole "Chriſtian world hath not the like of it if it be duly "executed."

Slow progreſs of this magiſtracy in Scotland.

ON its firſt introduction into this country, it did not at once take root and flouriſh. The firſt of the two ſtatutes which paſſed during the minority of James, beſides being the earlieſt attempt towards the inſtitution of any thing reſembling juſtices of peace, is, in many reſpects, a remarkable ſtatute, deviating from the phraſeology of the Scottiſh law, and appearing to have in view the introduction of circuits, after the model of thoſe in England. But neither this nor the ſubſequent act 1609 appears to have been followed with any material conſequences; notwithſtanding the commendation beſtowed in the latter ſtatute upon the efficacy of the meaſures employed by his majeſty for "the quiet-"neſs and comfort of his ſubjects," and upon the "excel-"lent wiſdome and rare graces of his royall mind, where-"with God hes endewed him mair abundantlie than ony "king that ever did raign in this iland." In a ſubſequent period of the ſame reign the ſtatute 1617, ch. 8. ratified and confirmed the inſtructions given of before by his majeſty to the juſtices and commiſſioners appointed for keeping of his majeſty's peace, and to their conſtables; and expreſſing them more particularly, may be conſidered as the firſt general code of inſtructions for the execution of thoſe important offices.

1617, ch. 8. the firſt general code on this ſubject.

BUT notwithſtanding theſe ample and explicit regulations, it ſtill appears to have required the foſtering ſupport of a ſucceſſion of legiſlative interpoſitions to keep this favourite inſtitution from total decay. The ſtatute 1617 was ratified, approved, and confirmed by the firſt parliament of Charles I. 1633, ch. 25.; which alſo introduced two addi-

[t] 4 inſt. 170.

§ 3. HISTORY OF THE OFFICE.

tional regulations; the one was giving "full power, authority, and commiſſion to the lords of his majeſty's privy "council, to ſet down and impoſe penalties upon ſuch "of the juſtices of peace as ſhall not keep and obſerve "the diets prefixed for their ſeveral and particular meetings;" the other was giving "power likewiſe to the "ſaid lords of privy council to enlarge and amplifie the "power and authority of the ſaid juſtices of peace, if they "ſhall find it neceſſary and expedient;" with the farther proviſion, that whatever they ſhould decree and determine thereanent, ſhould have the force, ſtrength, and power, of an act of parliament.

1633, c. 25, gave additional powers to juſtices.

"THIS act, (obſerves Sir George Mackenzie [u]) being in "effect but a commiſſion, might be alleged to expire with "the king and parliament who gave it, as all mandates "laſt no longer than the mandator; and the power being "given to the privy council indefinitely, without adding for "the time being, it may be urged that it could laſt no "longer than that commiſſion of council;" yet as both he and Forbes [x] tell us, the council were in uſe to give inſtructions by virtue of this act.

Only a commiſſion.

KING JAMES'S regulations in 1617, ratified and enlarged by the firſt parliament of King Charles I. were adopted, though neither improved nor enlarged, at leaſt to any conſiderable degree, by the inſtructions to the juſtices of peace framed by Cromwell, in whoſe days, however, the advantages of the inſtitution began firſt to be ſenſibly experienced in this country [y].

Oliver Cromwell's inſtructions.

[u] Obſervations on the Acts, p. 384.
[x] Juſtice, Part 1. p. 12.
[y] Ibid. Preface.

Lord Gardenſton remarks, that the life and efficacy with which Oliver Cromwell inſpired the office, muſt have been more from the awe, reputation, and vigour, of his government, than from any advantage or ſuperiority in his regulations, which little differed from King James's. MS. tit. Juſtices.

§ 3. HISTORY OF THE OFFICE.

THE firſt parliament of Charles II. 1661, ch. 38. "taking under conſideration how much the appointing of juſtices of peace and conſtables within all the ſhires of this kingdom, under the reign of his majeſty's royal predeceſſors, did contribute to the peace, quiet, and good government thereof, and to the ſpeedy and impartial execution of law and juſtice," enacted and ordained, that, in all time coming, there ſhould "be juſtices of peace appointed within each ſeveral ſhire of this kingdom, to be nominated from time to time by his majeſty and his royal ſucceſſors, and empowered ſuch juſtices of peace to adminiſtrate juſtice, and put his majeſty's laws in execution, according to the particular inſtructions" therein mentioned.

A& 1661, c. 38.

Great utility of juſtices and conſtables.

Their appointment in each ſhire.

THESE inſtructions of the ſtatute 1661, which are little more than a ſomewhat fuller and more articulate ſtatement of thoſe of Oliver Cromwell in 1656, and King James's act 1617, ſtill conſtitute our only general code of laws touching theſe offices. Subſequent enactments, how numerous and important ſoever, regulate only particular branches of their juriſdiction.

A& 1661 is our only general code of laws on this ſubject.

ONLY one other ſtatute was paſſed concerning juſtices of peace while Scotland remained a ſeparate kingdom. This is James, 7th parliament 1685, ch. 16. It mentions "the many advantages which the lieges might have had if the juſtices of peace had exerced their functions with that diligence which the law required, and the many evils, eſpecially in eccleſiaſtic diſorders and irregularities, which might have been prevented by their care," and for "remeid thereof in time to come;" ratifies the acts of parliament 1617, 1633, and 1661; and further, "gave full power, authority, and commiſſion to the ſaid juſtices to put the laws in execution againſt all who ſhall be guilty of conventicles, irregular baptiſms and marriages, with-

1685, c. 16.

§ 3. HISTORY OF THE OFFICE.

" drawing from church ordinances, and other ſuch diſ-
" orders, in ſo far as they are not capital, conform to the
" laws made thereanent; and where the crime is capital
" they are to ſecure the perſons, and acquaint the ſheriff
" or other judge ordinary thereof: And it is declared, that
" in their proceedings againſt church irregularities, bap-
" tiſms, marriages, and conventicles, the juſtices may pro-
" ceed immediately, without waiting any time after the
" crimes are committed." The ſtatute contains this extra-
ordinary declaration, that for " their farther encourage-
" ment, his majeſty allows unto the ſaid juſtices of peace,
" the fynes of all, except heritors, which ſhall ariſe from
" theſe delinquencies, judged by them to be employed for
" explicating of their juriſdiction as they ſhall think fit;
" and for diſcovering of what the fines of heritors ſhall
" amount to. The clerks of theſe courts are hereby ap-
" pointed to ſend a ſubſcribed liſt of them to the clerks
" of exchequer in the firſt week of November yearly, under
the pain of deprivation." But this ſtatute, with other ab-
ſurd and oppreſſive acts of that reign, was reſcinded by the
general reciſſory act, William and Mary, 1690, ch. 28.

Gives new powers to take cognisance of various offences.

Allows them the fines they inflict.

Reſcinded by act 1690, c. 28.

By the 18th article of the union, it is provided, that
the laws for the regulation of trade, cuſtoms, and the exciſe,
ſhall be the ſame in Scotland as in England; but that all
the other laws in Scotland ſhall remain in force; yet alter-
able by the parliament of Great Britain: but with this cau-
tion, that laws relating to public policy are alterable at the
diſcretion of the parliament; laws relating to private right are
not to be altered but for the evident utility of the people of
Scotland.

Articles of the union.

This article of the union was followed out by the queen's
proclamation, which appointed juſtices of the peace with
the ſame powers as thoſe in England, in matters touching
the cuſtoms and exciſe, but in every thing elſe to be regu-

Q. Anne's proclamation.

§ 3. HISTORY OF THE OFFICE.

lated by the ſame laws as formerly; and by an act [z] for rendering the union of the two kingdoms more entire and complete, which ordained, "that in every ſhire and "ſtewartry within Scotland, and alſo in ſuch cities, li- "berties, and precincts, in Scotland, as her majeſty, her "heirs or ſucceſſors, ſhall think fit, there ſhall be ap- "pointed by her majeſty, her heirs or ſucceſſors, under the "great ſeal of Great Britain, a ſufficient number of good "and lawful men to be juſtices of peace within their re- "ſpective ſhires, ſtewartries, cities, boroughs, liberties, or "precincts; which perſons ſo appointed, over and above the "ſeveral powers and authorities veſted in juſtices of peace "by the laws of Scotland, ſhall be further authoriſed to do, "uſe, and exerce, over all perſons within their ſeveral "bounds, whatever doth appertain to the office and truſt "of a juſtice of peace, by virtue of the laws and acts of par- "liament made in England before the union, in *relation to*, "*and for the preſervation of, the public peace*: provided, "nevertheleſs, that, in the ſeſſions of the peace, the methods "of trial and judgment ſhall be according to the laws and "cuſtoms of Scotland."

6th Anne, c. 6. gives them the power of Engliſh juſtices touching the peace.

Import of this act.

THIS ſtatute did not ſo much give the juſtices of peace new juriſdiction, as remove difficulties preventing the proper exerciſe of that juriſdiction which they already enjoyed.

How it enlarged their powers.

THE Scottiſh acts had laid them under reſtrictions, *firſt*, with reſpect to the perſons againſt whom they could proceed. In the caſe "of any *landed gentleman*, whoſe rents "amount to 10 chalders of victual, or 1000 marks of ſilver, "refuſing, or delaying without cauſe, when charged to "make his appearance before a juſtice [a]," the act 1617 did not empower the juſtice, whoſe warrant was contemned, to command his conſtable, or other officer, to bring them

[z] 6 Anne, ch. 6, § 2.

[a] Chap. I. § 3. See Appendix I.

before him, as it did in the caſe of perſons of *meaner degree.* § 3. HISTORY OF THE OFFICE.
It went no farther than directing the juſtice "to inform the "ſame to ſome of his majeſty's privy counſel, to the effect "the *party of the quality foreſaid* may be called, and fined "for his diſobedience." And in like manner, that part of the ſame act, giving them juriſdiction in the caſe of riots and breaches of the peace, empowers them to proceed only againſt perſons "under the degree of noblemen, prelates, "counſellors, and ſenators of the college of juſtice." *Secondly*, they laid them under inconvenient reſtrictions touching the interval to elapſe before they were allowed to ſummons any perſon before them. The ſtatute 1617[b] contained an expreſs declaration, that "neither the erection of "the ſaid commiſſioners and juſtices of peace, and grant "of juriſdiction and privileges to them, nor the making or "approbation of the particular articles above written, introduced in their favour, nor any thing therein contained, "ſhall be in any ſort derogatory or prejudicial to the rights, "privileges, or liberties, granted and beſtowed by his majeſty, or his highneſs's royal predeceſſors, of before to any "of his majeſtie's ſubjects, of whatſoever eſtate or quality, "from the higheſt to the loweſt: but declares, that the "ſaid rights, privileges, or liberties, ſhall remain in their "own integrity ſafe and entire, and unhurt or prejudged. "And leſt this reſervation ſhould ſeem altogether to deſtroy "the power granted to the ſaid juſtices, or ſhould beget controverſies betwixt them and any others having right or "liberty of juriſdiction, as ſaid is, our ſovereign lord, for "removing of all queſtion which may ariſe betwixt them "thereanent, declares, that it *ſhall not be lawful*, nor *permitted to the ſaid juſtices, to make any citation of party before "their court till the expiry of the ſpace of fifteen days after "the committing of the fact*, for which the committer is to "be convened; *at the complete outrunning of which ſpace*, if "any having power and juriſdiction, as ſaid is, hath no-

Removed the limitation and reſtriction of the Scottiſh acts.

[b] Chap. II. § 14. Appendix I.

§ 3. HISTORY OF THE OFFICE.

"gleeted to exerce and uſe the privilege and liberty of their "right and power, it ſhall then be lawful to the ſaid juſ- "tices to make citation, and proceed againſt the parties," &c. Theſe limitations, which had been dropped in Cromwell's inſtructions, were *verbatim* repeated in the general ſtatute, Charles II. 1661 [c], but are entirely done away by the Britiſh ſtatute communicating the ſame powers and juriſdiction, touching the preſervation of the peace to Scottiſh juſtices with their brethren in England, who had never been cramped by any ſuch limitations.

HERE, however, it may be proper to cloſe our hiſtorical ſurvey of the ſtatutes; which henceforward multiply too faſt upon us to admit of being perſpicuouſly noticed, unleſs under the different heads to which they reſpectively belong.

COMMISSION OF THE PEACE.

IV. FROM the period of the union downward, juſtices of peace have been named by a commiſſion paſſing under the great ſeal, and differing in few particulars from the Engliſh commiſſions. The aſſignment of juſtices of peace, by the king's commiſſion, was firſt ordained by the ſtatute 1 Edward III. ch. 15, which, however, gave them no other power but only to keep the peace. In that and the following reigns the commiſſion was from time to time altered and enlarged, till at length, in the reign of Queen Elizabeth, it had become ſo encumbered with many ſtatutes, vain repetitions, and other corruptions which had crept therein by the miſtaking of clerks [d], that it was judged neceſſary to reform and correct it. Accordingly at a conference betwixt all the judges, in the 33d of that reign, this was accompliſhed, and a form drawn up which continues with little alteration to this day [e].

First aſſignment of juſtices by ſtatute.

Reformation of the commiſſion.

[c] § 3. & ch. II. § 11, 12.
[d] Dalt. ch. 5.
[e] Lambard's Eiren. B. 1. ch. 9. Burn's tit. Juſtice, § 21.

§ 4. COMMISSION OF THE PEACE.

This reformation regarded merely the language of the commiſſion, without making any change on the ſubſtance of it, or the powers of the juſtices under it; "care was "taken that the droſſy matter of the former commiſſion, "being tried out by the fire of learning and diſcretion, the "body and countenance thereof ſhould, as much as might "be, remain, and be let to ſtand [f]."

What it is.

The commiſſion is a letter addreſſed by the king to certain perſons, naming them juſtices of peace, and giving them various powers and charges, for directing them in the execution of that office. It conſiſts, therefore, of three parts; 1ſt, The ſalutation of the king; 2dly, The power given to the juſtices; and, 3dly, The charge.

1. Salutation.

The ſalutation is as follows: "George III, by the grace "of God, king of the united kingdom of Great Britain and "Ireland, defender of the faith; to &c. "greeting."

Why in the king's name.

This manner of iſſuing the commiſſion in the king's name, ſeems to be founded, ſays Dr. Burns, on the ſtatute of the 27th Henry VIII, cap. 24, which enacts, "that all juſtices "of the peace ſhall be named by letters patent under the "king's great ſeal, in the name and by authority of the "king; but reſerves to all cities and towns corporate, which "have juſtices, the liberties they have enjoyed in that be-"half [g]."

By the grace of God.

Theſe words, *by the grace of God*, are ſaid to have been firſt uſed by king Pepin and Charles the Great, in imitation of the Conſtantinopolitan emperors, who called themſelves *crowned of God* [h]. This, therefore, according

[f] Lambard, ibid.
[g] Burns, ibid.
[h] Quarigan.

§ 4. COMMISSION OF THE PEACE.

to many learned French writers, has ever been the appropriate ſtyle of the ſovereigns of independent ſtates, or the dignitaries of the hierarchy, who diſclaimed all human dependence. And ſuch ſeems at leaſt to have been its import, in the fifteenth century; when the duke of Burgundy's adding theſe words to his titles, was ſo much conſidered by Charles VII, as a renunciation of fealty, and a declaration of independence, that he obliged the duke to declare that it was without prejudice to the paramount rights of the crown of France; and in 1463, as we are told by Mezeray, he forbade the duke of Britanny to "ſtyle himſelf duke *by the grace of God*, to coyn money, or impoſe taxes[i];" and when that monarch re-eſtabliſhed the prince of Orange, and wiſhed to ſhew him particular favour, he thought it neceſſary to give him a ſpecial permiſſion to uſe this title[k].

THIS paramount and pious ſtyle was early adopted by the ſovereigns of both parts of theſe united kingdoms[l]. Under this title, *Dei gratia rex* Scotorum, charters were granted both by Alexander I[m], who is ſaid to have added the counter ſeal, or double impreſſion, to ſeals, not long before begun to be employed, in the authentication of deeds[n]; and

[i] Buttell's tranſlation, 483.

[k] "Avons octroyé à notredit eouſin prince d'Orange, que lui et ſes ſucceſſeurs en la dite principauté, puiſſent de *grace eſpecial* uſer en leur intitulation de ces mots: *par la grace de Dieu* prince d'Orange." Hiſt. de Dauphine, t. 2. p. 108. Nouveau Traite de Diplomatique, tom. 41. p. 591.

[l] "We find that James VI, upon returning from England, borrowed the addition of the *grace of God*." Roſs's Lectures on the Practice of the Law of Scotland, v. 1, p. 283. This remark is in the face of every page of thoſe documents, which that very intelligent practitioner himſelf recommends as the ſafeſt guides to the knowledge of our ancient juriſprudence.

[m] Anderſon's Diplomata et numiſmata Scotiæ, No. 8.

[n] Before the uſe of ſeals, deeds were authenticated by prefixing the croſſes of the parties and witneſſes to their names written by notaries at the foot of the page. After the uſe of ſeals, which alone were thought to give the ſtamp of authenticity, it ceaſed to be cuſtomary for notaries to write the names of witneſſes at the bottom of

by his ſucceſſor David I, whoſe reign Buchanan, though ſo little partial to regal excellence, pronounces a more perfect example of a good prince, than it is poſſible to conceive in theory[o]. In the ſame manner James I, in a deed in the Scottiſh language, bearing to be written, *ſua ipſius manu*, takes the appellation, "throw *the grace of God*, kynge of Scottis[p]." Indeed, for a century prior to the reign of the laſt-mentioned monarch thoſe had come to be the words uniformly inſcribed on the royal ſeal of Scotland. And the famous indenture of Robert Bruce[q], ſtyles that monarch "Dominum Ro-"bertum, *Dei gratia* regem Scottorum illuſtrem[r]." § 4. COMMISSION OF THE PEACE.

On occaſion of the late union with Ireland, the title "*of* "*the united kingdom of Great Britain and Ireland, king*," &c. was adopted[s]. Article 1. provides, that "the ſaid kingdoms "of Great Britain and Ireland ſhall, upon the 1ſt day of Janu-"ary 1801, be united into one kingdom, by the name of the "*united kingdom of Great Britain*; and that the royal ſtile "and titles appertaining to the imperial crown of the ſaid Of the united kingdom, &c.

the page: and though witneſſes were preſent in matters of importance, their names were only mentioned at the end of the text.

[o] Summo ingenio homines doctiſſimi, qui boni regis imaginem exprimere contenderunt, talem non potuerunt animo cogitare, qualem ſe David toto vitæ curſu præſtitit. Rer. Scot. Hiſt. l. vii. c. 36.

[p] And. Diplom. No. 67.

[q] Original in the advocates library. See copy in the appendix to lord Kames' Hiſtorical Law Tracts, No. 5.

[r] This word *illuſtris*, which Robert here uſes, and perſonally ſo well merited, was the choſen epithet of the Merovingian kings of France; who are ſaid, by the French hiſtorians, to have uſed it from the time that the emperor Anaſtaſius found it neceſſary to purchaſe the amity, by gratifying the vanity, of their king Clovis, with the conſulſhip. In the language of the Conſtantinopolitan court, conſuls being of the higheſt dignity, were called *illuſtres*; while inferior magiſtrates, according to their reſpective degrees of rank, were either *clariſſimi*, or only *ſpectabiles*.

This epithet *illuſtris* is alſo applied to another of our kings, who had perſonally little title to it, John Baliol, in a charter granted by Wallace, under the title "Domini Gulielmi Wallace, "cuſtodis Scocie, nomine preclari "principes Johannis Dei gratia regis "Scocie *illuſtris*." And. Diplom. No. 44.

[s] 39 and 40 Geo. III. c. 67.

§ 4. COMMISSION OF THE PEACE.

" united kingdoms and its dependencies, ſhall be ſuch as his " majeſty, by his royal proclamation under the great ſeal of " the united kingdom, ſhall be pleaſed to appoint." Accordingly, his majeſty was pleaſed to iſſue a proclamation, referring to this enactment; and then proceeding as follows: " We have thought fit, by, and with, the advice of " our privy council, to appoint and declare that our royal " ſtyle and title ſhall henceforth be accepted, taken, and " uſed, as the ſame are ſet forth in manner and form fol- " lowing: that is to ſay, the ſame ſhall be expreſſed in the " Latin tongue, by theſe words, *Georgius, Dei gratia, Britan- " niarum rex, fidei defenſor;* and in the Engliſh tongue, by theſe " words, George III, by the grace of God, of the united king- " dom of Great Britain and Ireland, king, defender of the faith;" inſtead of "*king of Great Britain, France, and Ireland,*" &c. The title of *king of Great Britain* was firſt aſſumed by James VI [t],

[t] This James VI did by a proclamation, iſſued in 1606; in which he ſays, " Wherefore we have thought " good to diſcontynue the devyded " names of England and Scotland " out of our regall ſtile; and do in- " tend and reſolve to take and aſſume " unto us the name and ſtile of *Kinge* " *of Great Britaine;* including there- " in, according to the truth, the " whole iſlande; wherein noe man " can imagine us to be led by anye " humor of vaine glorie or ambition; " becauſe wee ſhoulde, in that caſe, " rather delight in a long enumera- " tion of many kingdoms and ſeig- " nories, whereof, in an inheritance, " we have plenty enough; if we " thought there were glorie in that " kind of ſtile; but onlie that wee " uſe it as a ſignification of that " which, in part, is already done, and " ſignificant prefiguration of that " which is to done hereafter: and " upon all which conſideration, wee " do, by theſe preſents, by force of " our kingly power and prerogative, " aſſume to ourſelf, by the cleer- " neſs of our right, the name and " ſtile of king of Great Britain, " France, and Ireland, defender of " the faith, &c. as followeth, in our " juſt and lawful title; and do here- " by publiſh, promulge, and declare " the ſame to the end, that in all " proclamations, miſſive, forrain and " domeſtical, treaties, leagues, dedi- " cations, impreſſions, and in all other " cauſes of like nature, the ſame may " be uſed and obſerved.

" And to the end the ſame may be " more effectually devulged, our will " is, that the ſtile be from henceforth " uſed upon all inſcriptions, upon our " currant moneys and coynes of gould " and ſilver hereafter to be mynted.

"in ſignificant prefiguration" (as his majeſty himſelf expreſſes it) of that union which afterwards incorporated his two independent, ſovereign, and imperial, kingdoms, into one great people. But James being diſappointed in his endeavours to accompliſh this event, which he had ſo much at heart, appears to have diſcontinued his aſſumed title; and the rubric of his 21ſt parliament (1612) gives him that of "king of Scotland, England, France," &c. which continued ever after to be uſed, and appears on the ſubſequent coins, while Scotland remained a ſeparate kingdom. § 4. COMMISSION OF THE PEACE.

BEFORE the acceſſion of James to the Engliſh throne, our monarchs had in general retained the appellation "king of "Scottis (rex Scottorum)," which ſeems to have been the ſtyle originally uſed by all the European monarchs, who in the moſt ancient deeds are deſcribed *rex Anglorum*, *rex Francorum*, &c. &c. But there are exceptions in our hiſtory. Thus the moſt ancient Scottiſh charter that has yet appeared, ſtyles Duncan, who began to reign in the year 1095, "conſtans hereditarie *rex Scotie*[u];" and the rubric of the ſeventh parliament (1427) ſtyles James I, "Dei gratia *regis Scotie*," as thoſe of Mary's give her the appellation "queen of *Scotland*."

"OF the united, &c. *king*." In that ſolemn act, quoted above, the parliament declares the crown of Great King.

"And our will and pleaſure is, "that in ſuch appellations or nomi- "nations as ſhall hereafter be made "by force of thoſe preſentes, the "ſame ſhall be expreſſed in ſuch, and "the ſame manner and form, and af- "ter ſuch computation, as if we had "aſſumed the ſame the firſt day of "our reign; forbearing onlie for the "preſent, that anye thing herein con- "teyned doe extend to anye legall "proceeding, inſtrument, or aſſurance, "until forthe order be taken in that "behalf." Rhymer's Fœdera, tom. xvi, p. 604.

[u] And. Diplom. Scotiæ, No. 1. Lord Hailes has ſome doubts of the authenticity of this charter. See Annals, vol. i, p. 52, Ed. 1797.

§ 4. COMMISSION OF THE PEACE. Imperial, what it means.

Britain to be *imperial*. What is the preciſe diſtinction betwixt emperor and king, ſeems not yet perfectly aſcertained; and old deeds have been preſerved where emperors are termed kings, and kings emperors [x]. The lateſt ſyſtematical writer upon the laws of England, confeſſes that he cannot "ſuccinctly aſcertain the meaning of this expreſſion [y]" (imperial crown). But it ſeems to be ſatisfactorily explained by Blackſtone [z], to mean only "that our king is equally ſove-"reign and independent within theſe his dominions, as any "emperor is in his empire, and owes no kind of ſubjection "to any other potentate on earth." In the ſame ſenſe the word is underſtood by our parliament in the old act of James III [a], ordaining "nottars" to be made by the king, and not by the emperor, "ſen our ſoveraine lorde hes full juriſ-"diction and *free empire* within his realme." Accordingly charters are ſtill extant [b], where, like ſome of the Engliſh kings before the Norman conqueſt [c], our ancient monarchs are ſtyled *baſileus*, the imperial title at Conſtantinople [d].

[x] Nouvelle Traité de Diplomatique, t. iv. p. 65.

[y] Wooddeſon's Vinerian Lectures, v. i, lect. 3, p. 75.

[z] B. i. c. 7. p. 242.

[a] C. 30. 1469.

[b] Thus in a charter, which has attracted notice in the more intereſting controverſy reſpecting the antiquity of the repreſentation of the boroughs, Malcolm III is ſtyled Malcolmus Dei gratia Scotorum, *baſileus*, auctoritate regia, &c.; it is more fully quoted, both by Dr. Stuart in his Public Law and Conſtitutional Hiſtory of Scotland, and by Mr. Wight in his Inquiry into the Riſe and Progreſs of Parliament. B. i. ch. 2. p. 23.

[c] Blackſtone, b. i. ch. 7.

[d] So much did the Greek emperors conſider the title of *baſileus* or *emperor* as peculiar to themſelves, that they did not readily allow it to be given even to the weſtern emperors, whom they wiſhed rather to be addreſſed by the lower (as it was thought) appellation of *king*. So far was this abſurd diſpute carried, that when Baſileus Macedo, the Conſtantinopolitan emperor, had received letters from pope Hadrian II, wherein Lewis II, then emperor of the weſt, was called *baſileus* or *emperor*, he cauſed that honorary title to be eraſed out of the letters, and diſpatched an embaſſy to Lewis, complaining of his aſſumption of that title. The correſpondence between them has been preſerved. Selden, Tit. Hon. ch. ii. p. 16.

And "howſoever," obſerves Mr. Selden, "theſe emperors of "the Eaſt and Weſt thus ſtrove about this great title of *Em-* "*peror* or *Baſileus*; as if they had been agreed that no other "prince might juſtly uſe it but themſelves; yet diverſe other "princes, as the kings of England, Scotland, France, and "Spain, beſide others, have their ſupremacy, acknowledg- "ing no ſuperior but God himſelf, and may everyway, as "juſtly as the emperor of Rome, be ſtiled emperors, or "by any other name which expreſſes the fulleſt hight of "honour and dignity [c]." COMMISSION OF THE PEACE.

THE ſalutation next contains the names of thoſe perſons to whom the commiſſion is directed, and who are thereby veſted with the charge of the peace. They are, either on account of their rank and dignity, named at the beginning of every commiſſion; and are thus general juſtices of the peace throughout the country; or, on account of their connection with ſome one county, are named in the commiſſion for it alone; and are thus conſtituted juſtices within its bounds. Of the firſt claſs, are, 1, all privy counſellors; 2, the lord juſtice-general, lord juſtice-clerk, and lords commiſſioners of juſticiary, for the time being; the lord preſident, and lords of the ſeſſion; lord chief baron, and other barons of exchequer, in Scotland; the lord advocate, and ſolicitor-general, for the time being. The other claſs conſiſts of the moſt reſpectable inhabitants of each county. General nomination.

THE ſalutation addreſſes them according to their reſpective dignities. The princes of the blood are addreſſed, our moſt dear ſons, or brother, and faithful counſellor; viſcounts, and all peers of higher rank, are addreſſed, "our "moſt dear couſin, and counſellor;" the other members of the privy council, "our well beloved and faithful coun- "ſellors;" the other names in the commiſſion, "our belov- How addreſſed.

[c] Seld. Tit. Hon. part i, ch. 2.

§ 4. COMMISSION OF THE PEACE.

" ed, and faithful." *Beloved* is the word uſed in England, as *nos amés*, or *bien amés* [f], was under the French monarchy, inſtead of *our lovites*, the term uſed in the Scottiſh ſignet letters.

Why ſpeak in the plural.

THEY are addreſſed *our*, &c. The cuſtom of monarchs uſing the plural, when ſpeaking of themſelves, is extremely ancient in Europe. In France, it is ſaid to have been the practice ſo far back as the eleventh century. Many old deeds begin in the plural, but afterwards uſe the ſingular, particularly in the ſubſcription clauſe; examples of which are to be found in that treaſure of juridical learning, and monument of human induſtry, Mabillon *de re Diplomatica* [ff]. Mr. Ruddiman ſays the cuſtom did not obtain in Scotland till the reign of Alexander II; nor in England till the reign of Richard I [g]; and accordingly queſtions the authenticity of a charter of Malcolm III, from its making that prince ſpeak of himſelf in the plural.

THE only other thing in this clauſe ſtill to be noticed, is the word *greeting* (from the Latin *grator*), which has always been uſed in our ſignet-letters as the expreſſion of that good will, which, in one ſhape or other, has been from the moſt remote antiquity, the ſtyle of letters of kings to their ſubjects, as well as of other perſons.

2. Power given to the juſtices.

THE ſecond part of the commiſſion relates to the powers entruſted to the juſtices of peace, which are contained in two ſeveral clauſes or aſſignments: the firſt aſſignment is in theſe words: " Know ye, that we have aſſigned you jointly

Firſt aſſignment.

" and ſeverally, and every one of you our juſtices, to keep " our peace in our county of B. And to keep, and cauſe " to be kept, all ordinances and ſtatutes for the good of the

[f] Diction. de L'Acad. Francoiſe. [g] Pref. to And. Dip. Scot. 31, 34.
[ff] Lib. ii, cap. 6.

§ 4. COMMISSION OF THE PEACE.

" peace, and for preſervation of the ſame, and for the quiet " rule and government of our people, made in all and " ſingular their articles in our ſaid county (as well within " liberties as without), according to the force, form, and ef- " fect, of the ſame; and to chaſtiſe and puniſh all perſons " that offend againſt the form of thoſe ordinances or ſta- " tutes, or any one of them in the aforeſaid county, as it " ought to be done, according to the form of thoſe ordi- " nances and ſtatutes: and to cauſe to come before you, or " any of you, all thoſe who to any one or more of our " people, concerning their bodies, or the firing of their " houſes, have uſed threats, to find ſufficient ſecurity for " the peace, or their good behaviour towards us and our " people; and if they ſhall refuſe to find ſuch ſecurity, " then them in our priſons, until they ſhall find ſuch ſecuri- " ty to cauſe to be ſafely kept."

By this firſt aſſignment, the juſtices of peace have all the ancient power touching the peace, which the conſervators of the peace had by common law; as alſo the whole authority added by the ſtatutes; " they have theſe " powers ſingularly, dually, and plurally [h]." They are aſſigned to " keep, and cauſe to be kept, *all ordinances and* " *ſtatutes made for*," &c. It ſeems certain, obſerves Dr. Burns [i], after Hawkins, 2. 37, that under the expreſſion all ordinances, &c. are included thoſe ancient ſtatutes concerning the peace, made before the inſtitution of juſtices of the peace, which were all of them expreſsly mentioned in the ancient commiſſions of the peace; although none of the ſtatutes, which ordain the office of juſtices of the peace, ſay any thing concerning their execution. The power of the juſtices, therefore, in relation to them, ſeems entirely to depend on the king's commiſſion; and yet has always been unqueſtionably allowed; " whence it appears (he adds) that

[h] Lambard eirenarcha, b. i. c. 9. [i] Tit. Juſtices of Peace, § 12.

§ 4. COMMISSION OF THE PEACE.

regularly the king, by his commiſſion, may authoriſe whom he pleaſes to execute an act of parliament."

THE Engliſh lawyers obſerve that the words, "for the "quiet government *of our* people," were not meant to exclude the ſubjects of a foreign prince, or other ſtrangers, while living in this country, from the protection of this magiſtracy [j]. What is meant by the expreſſion, "within liber-"ties as well as without;" and the particulars of giving ſecurity for the peace and good behaviour, will be fully explained afterwards [k].

Second aſſignment.

THE ſecond aſſignment is as follows: "We have alſo aſ-"ſigned you, and every two or more of you (of whom any "one of you, the foreſaid A, B, C, D, E, and F, we will ſhall "be one), our juſtices, to inquire the truth more fully ac-"cording to the law and cuſtom of the land, and of all "and all manner, felonies, or capital crimes, poiſonings, en-"chantments, ſorceries, art magic, treſpaſſes, foreſtalling or "regratings, ingroſſings, and extortions whatſoever, and of "all and ſingular other crimes and offences, of which the "juſtices of our peace may or ought lawfully to inquire by "whomſoever, and after what manner ſoever, in the ſaid "county done or perpetrated, or which ſhall happen to be "there done or attempted; and alſo of all theſe, who, in "the aforeſaid county, in companies, againſt our peace, in "diſturbance of our people, with armed force, have gone, "or rode, or hereafter ſhall preſume to go and ride; and alſo "of all thoſe who have there lain in wait, or hereafter ſhall "preſume to lie in wait, to maim or cut, or kill our people; "and of all victuallers, and all and ſingular other perſons, "who, in the abuſe of weights or meaſures, or in ſelling "victuals againſt the form of the ordinances and ſtatutes, "or any one of them therefore made for the common bene-

[j] Burns, tit. Juſtices. 2. Hawkin 35. 1. Hales' Hiſt. 93, 94.
[k] See book ii. ch. 3.

"ſit of our people, have offended, or attempted, or hereafter "ſhall preſume to offend, or attempt; and alſo, of all ſhe- "riffs, bailiffs, ſtewards, conſtables, keepers of goals, and "other officers, who, in the execution of their offices, about "the premiſes, or any of them, have unduly behaved them- "ſelves, or hereafter ſhall preſume to behave themſelves un- "duly, or have been, or ſhall happen hereafter to be, cauſe- "leſs, remiſs, or negligent, in our aforeſaid county; and of "all and ſingular articles and circumſtances, and all other "things whatſoever that concern the premiſes, or any of "them, by whomſoever, and after what manner ſoever, in "our aforeſaid county, done or perpetrated, or which here- "after ſhall there happen to be done or attempted in what "manner ſoever; and to inſpect all indictments or libels "whatſoever, ſo before you taken, or to be taken, or before "others late our juſtices of peace in the aforeſaid county "made or taken, and not yet determined; and to make and "continue proceſſes thereupon, againſt all and ſingular the "perſons ſo indicted or accuſed, or who before you hereafter "ſhall happen to be indicted or accuſed, until they can be "taken, ſurrender themſelves, or be outlawed, or declared "rebels; and to hear and determine all and ſingular the fe- "lonies, capital crimes, poiſonings, inchantments, forceries, "arts magic, treſpaſſes, foreſtallings, regratings, ingroſſings, "extortions, unlawful aſſemblies, indictments aforeſaid, and "all and ſingular other the premiſes, according to the laws "and ſtatutes of the kingdom, as in the like caſes it has "been accuſtomed or ought to be done; and the ſame of- "fenders, and every of them, for their offences, by fines, "ranſoms, amerciaments, forfeitures, and other means, as "according to the law and cuſtom of the land, or form of "the ordinances or ſtatutes aforeſaid, it has been accuſtomed, "or ought to be done, to chaſtiſe and puniſh: provided al- "ways, that if a caſe of difficulty, upon the determination "of any of the premiſes before you, or any two or more of "you, ſhall happen to ariſe, then let judgment in no ways

§ 4. COMMISSION OF THE PEACE.

§ 4. COMMISSION OF THE PEACE.

" be given thereon before you, or any two or more of you, " unleſs in the preſence of one of our juſtices, or of one of " our juſtices appointed to hold courts of circuit in the afore- " ſaid county."

THE ſecond aſſignment in the commiſſion gives authority to any two juſtices of the peace, 1, to inquire (according to the law and cuſtom of the land) of all offences mentioned in the commiſſion; 2. to inſpect all indictments; 3. to make and continue proceſſes thereupon againſt offenders, and to cauſe them to appear and anſwer; 4. to hear and determine all ſuch offences; 5. to chaſtiſe and puniſh the ſaid offenders by fines, impriſonments, and otherwiſe, according to law; but, obſerves Mr. Dalton [l], not to award any damages to the injured party otherwiſe than by perſuaſion [m].

" LEST (ſays Lambard [n]) the juſtices ſhould rather ground " their judgments upon the number of voices than upon " the weight of reaſons, their powers are ſhut up with a " proviſion and reſtraint, that in all caſes of ambiguity they " ſhall not proceed to judgment, unleſs in the preſence of " one of our juſtices, or of one of our juſtices appointed to " hold courts of circuit in the foreſaid county." This, Mr. Erſkine ſays, when applied to Scotland, muſt be underſtood of a lord of juſticiary [o]. In the Engliſh commiſſion, the

[l] Country Juſtice, c. 5.

[m] This ſpecial authority to puniſh by fines, &c. (Mr. Lambard obſerves) was ſuffered to remain, not as of any neceſſity, as the puniſhment of all offenders is implied in the word *determining*; and as it is incident to every court of record, but only for the plainer declaration of the power of the juſtices, and the more aſſured terrifying of offenders. (*Eirenarcha*, book i. c. 9.) But the power of awarding reparation to the party who brings the complaint before the judge, ſeems to be juſt as neceſſarily implied in the word *determine*; accordingly this ſubtility (if ſuch really be the import of the thing) never perplexed our practice. In every criminal proſecution before the Scottiſh ſeſſions of the peace, the firſt ſhape of the puniſhment is always reparation to the injured party.

[n] Ibid.

[o] Inſt. b. i, tit. 4, § 18.

expreſſion is, "one of our juſtices of the one or other bench, "or of one of our juſtices appointed to hold the aſſizes in the foreſaid county." Yet, Mr. Lambard adds, "if they "liſt to proceed, without the judge's advice, their judgment "is not void; but it ſtandeth good and effectual until it be "reverſed by a ſuperior court[p]." § 4. COMMISSION OF THE PEACE.

ALL the buſineſs included in this ſecond aſſignment belongs to the ſeſſions of the peace. To go over the words of this aſſignment more particularly here, would be anticipating what is fully diſcuſſed afterwards, under, as appeared, its proper heads.

THE commiſſion concludes with two charges; one to the juſtices, to be diligent in the execution of the premiſes, and ſaving to his majeſty, the amerciaments, and other things belonging to the crown; the other charge is to the ſheriff, to be attendant on the juſtices, and to the keeper of the rolls. The charge to the juſtices is as follows: "And there-"fore we command you, and every of you, that to keeping "the peace, ordinances, ſtatutes, and all and ſingular other the "premiſſes, you diligently apply yourſelves; and that, at cer-"tain days and places, which you, or any ſuch two or more "of you, as is aforeſaid, ſhall appoint for theſe purpoſes, "into the premiſſes you make inquiries, and all and ſingular "the premiſes hear and determine, and perform and fulfil "them in the aforeſaid form, doing therein what to juſtice "appertains, according to the law and cuſtom of the land, "ſaving to us the amerciaments and other things to us there-"from belonging." The charge to the ſheriff is as follows: "And we command, by the tenor of theſe preſents, our ſhe-"riff of the county of that at certain days "and places, which you, or any ſuch two or more of you, "as is aforeſaid, ſhall make known to him, he cauſe to come "before you, or ſuch two or more of you, as aforeſaid, ſo

[p] Ibid.

" many, and ſuch good and lawful men of his bailiewick (as
" well within liberties as without), by whom the truth of the
" matter in the premiſes ſhall be the better known and deter-
" mined. We alſo command the keepers of the rolls of our
" peace, in our county foreſaid, to bring before you, at the
" days and places foreſaid, the writs, precepts, proceſſes, and
" indictments foreſaid, that they may be inſpected, and by
" a due courſe determined, as is aforeſaid. In witneſs where-
" of, we have cauſed theſe our letters to be made patent.
" Witneſs ourſelf, at Weſtminſter, the day of
" and year of our reign."

Subſcription clauſe.

THE concluding clauſe is as follows: " In witneſs where-
" of we have cauſed theſe our letters to be made patent.
" *Witneſs ourſelf*, at Weſtminſter," &c. This method of authenticating deeds, which is noticed by foreign writers, as a peculiarity in the ſtyle of his Britannic majeſty, is ſaid to have been introduced by Richard I.

§ 5. QUALIFICATION OF JUSTICES OF PEACE.

V. THIS magiſtracy may either be productive of much good or much evil to the community, juſt as thoſe who exercise it poſſeſs or not the qualifications neceſſary for the able, active, and independent diſcharge, of its various duties, and particularly for the ſafe, prudent, and upright employment, of that diſcretionary power, which in ſo many inſtances is entruſted to them. Both the Engliſh and Scottiſh legiſlatures are therefore extremely anxious and explicit in deſcribing the qualities, character, and circumſtances, which are underſtood to be poſſeſſed by thoſe in whom is repoſed this important truſt.

" THE ſtatute lawes (ſays Lambard [q]) have reſpect to the
" manners and abilitie, or livelihood of them all; and to the
" ſkill and learning of ſuch as are ſpecially ſelected, and there-
" fore named of the quorum [r]: for gardeins of the peace

[q] Eirenarch, b. i. c. 6.

[r] See this explained below, § 7.

§ 5. QUALIFICATION OF JUSTICES OF PEACE.

"ought to be good men, and lawful; no maintainers of evill, "men of the beſt reputation [r], moſt ſubſtantial (or of moſt "valour), ſhall be aſſigned keepers of the peace, 18 E. III, "cap. 2, and 17; R. II. cap. 9." And, after farther particulars, Lambard concludes, "Thus then our parliaments (in-"tending to make the juſtice of peace an able judge) doe "require that he come furniſhed with three of the principal "ornaments of a judge: that is to ſay, with *juſtice*, *wiſdom*, "and *fortitude*; for to that ſumme, the words, *good*, *learned*, "*valiant*, doe fully amount. And under the word *good*, it is "ment that he loveth and feare God aright, without the which "hee cannot bee good at all." Almoſt the very words of this venerable magiſtrate are uſed by our ancient acts; which require them to be "honorable and worthie perſons, being "knawen of honeſt fame, and eſteemed na mainteiners of "evill or oppreſſion, experimented in the loveable lawes and "cuſtomes of the realme, actual indwellers in the ſame "ſchires [s], and godlie, wyſe, and vertuous gentlemen, of "good quality, moyen, and report, making reſidence within "their reſpective ſhyres [t]."

BUT the Engliſh ſtatutes did not content themſelves with deſcribing, in general, their character and qualifications. "For that" (ſays the ſame author), "contrarie to thoſe for-"mer ſtatutes, men of ſmall ſubſtance had crept into the "commiſſion, whoſe povertie made them both covetous and "contemptible, a new lawe was publiſhed," impoſing a penalty on any perſon who acted as juſtice, unleſs he had lands or tenements to the value of twenty pound a year [u]; and the rate of money being greatly altered ſince that time, it has ſince been enacted [v], that every juſtice, except as is therein excepted, ſhall have 100l. ſterling per annum, clear

[r] Meultz vailantz.
[s] A&1587, cap. 88.
[t] 1609, c. 7.
[u] 18 Hen. 6, cap. 11.
[v] Stat. 5, Geo. II, c. 18.

§ 5. QUALIFICATION OF JUSTICES OF THE PEACE.

of all deductions; and if he act without ſuch qualification, he ſhall forfeit 100l. ſterling; and of this the juſtice ſhall make oath [w].

IN like manner the firſt Scottiſh ſtatute, touching the magiſtracy [x], not only requires them to be "honorable and "worthie perſons," &c. &c. but "in degree, earles, lords, "baronnes, knights, and ſpecial gentleman, landed." This part of the deſcription was not repeated in the ſubſequent ſtatutes. Neither did they adopt any preciſe qualification and penalty, like the Engliſh. No particular qualification therefore, either in rank, money, or landed property, is neceſſary to entitle any perſon, named in the king's commiſſion, to exerciſe the office of juſtice of peace in Scotland. This however only increaſes the obligation on all concerned, to take care that the credit and utility of the office be not endangered by the appointment of perſons not qualified for it by their character and circumſtances.

§ 6. OATHS TO BE TAKEN BY JUSTICES.

VI. "SUCH" (obſerves Mr. Lambard [y]) "as doe occupie "judicial places, ought to take head what they do, knowing "that they exerciſe not the judgements of men only, but of "God himſelf, whoſe power, as they doe participate, ſo he "alſo is preſent on the bench with them; and therefore it "has always been the policie of chriſtian laws, to appoint "meete forms of religious atteſtation, or oaths for ſuch of-"ficer to take and conceive."

ACCORDINGLY, juſtices of peace muſt be ſworn before exerciſing their office. On renewing the commiſſion of the peace (which generally happens when any new names are added to it), there is iſſued out of chancery a writ of *dedimus*

[w] Stat. 18 Geo. II, c. 20.
[x] 1587, c. 82.
[y] Eiren, b. i. c. 10.

poteſtatem, or letter by the king, addreſſed to ſome juſtice or juſtices, with power and authority to receive the oaths of the other juſtices for the faithful execution of their office, and the other oaths required by the laws of the land. § 6. OATHS TO BE TAKEN BY JUSTICES.

"GEORGE III, by the grace of God, king of the united "kingdom of Great Britain and Ireland, defender of the "faith, to A, B, and C, greeting: know ye, that we have "given you, jointly and ſeverally, power and authority of re- "ceiving the oath of every juſtice and keeper of our peace, "nominated and appointed by virtue of the commiſſion of "the peace laſt made, in and for the county of "for the well and faithful executing of that office, according "to a certain ſchedule to this our writ annexed, and the "oaths in that caſe required by the law of the land: and "therefore we command you, that you, or one of you, re- "ceive the ſaid oaths; and when you have ſo received "them, that you, or one of you, certify us thereupon in "our chancery, under your ſeals, or the ſeals of one of you, "diſtinctly and openly, without delay, committing to us this "writ. Witneſs ourſelf, at Weſtminſter, the "day of and year of our reign." Writ of dedimus poteſtatem.

THE oath of office, or *de fideli adminiſtratione*, was inſerted in the ſtatutes 1617 and 1661, and ordered to be taken at the firſt meeting. This comprehended the following particulars:

1. THEY ſhall do equal right to rich and poor, according to the laws and ſtatutes of the realm.

2. THEY ſhall not be of counſel with any perſon in any matter depending before them.

3. THEY ſhall, every quarter, or oftener if required, keep the ſeſſions, if no juſt impediment prevents them.

§ 6. OATHS TO BE TAKEN BY JUSTICES.

4. THEY ſhall faithfully diſcharge their duty, and leave nothing undone.

BUT, ever ſince the Union, the Engliſh form, which, as Mr. Forbes remarks [z], contains three other particulars, is annexed to the commiſſions of the peace for Scotland, and is now always taken by the Scottiſh juſtices.

THIS form is as follows:

"YE ſhall ſwear, that, as juſtice of peace within the county of in all articles in the king's commiſſion to you directed, ye ſhall do equal right to the poor and to the rich, after your cunning wit and power, and after the laws and cuſtoms of this realm, and ſtatutes thereof made; and ye ſhall not be of council with any perſon in any quarrel hanging afore you; and that ye hold your ſeſſions after the form of ſtatutes thereof made; and the iſſues, fines, and amerciaments, which ſhall happen to be made, and all forfeitures which ſhall fall before you, ye ſhall truly cauſe to be entered, without any concealment or embezzling, and truly ſend them to the king's exchequer; ye ſhall not let for gift, or other cauſe, but well and truly ye ſhall do your office of juſtice of peace in that behalf; and that ye take nothing for your office of juſtice of peace to be done, but of the king, and fees accuſtomed, and coſt limited by the ſtatute; and ye ſhall not direct, or cauſe to be directed, any warrant by you to be made to the parties, but ye ſhall direct them to the bailiffs of the ſaid county, or other the king's officers or miniſters, or other indifferent perſons, to do execution thereof. So God you help."

Oath of allegiance.

THE oath of allegiance alſo is inſerted in the act 1661,

[z] Juſtice of Peace, part ii, p. 16.

and ordained to be taken [zz]; but the form is better, and more ſhortly expreſſed, in the ſtatutes William and Mary, 1693, ch. 6 [a]. "I do ſincerely promiſe and ſwear that I "will be faithful, and bear true allegiance to, &c. So help "me God." This ſhort and comprehenſive oath of allegiance little differs from the old form uſual in England; in which, Hale obſerves, "the prudence of the common "law is obſervable, that it was ſhort and plain, not en- "tangled with long and intricate clauſes or declarations, "but that the ſenſe of it was obvious to the moſt common "underſtanding, and yet withal comprehenſive of the whole "duty of a ſubject to his prince [b]." § 6. OATHS TAKEN BY JUSTICES.

THIS ſtatute of George I, introduced and inſerted the aſſurance alſo, requiring both it and the oath of allegiance to be taken by every juſtice, the fiſcal, and clerk, and other judges and magiſtrates, who are therein enumerated. The form of the aſſurance was altered by the ſtatute 6 Geo. II, ch. 53, § 1, paſſed upon the death of the pretended James III of England, and VIII of Scotland. It is as follows:

"I, A B, do, in the ſincerity of my heart, aſſert, ac- Aſſurance. "knowledge, and declare, that his majeſty king George is "the only lawful and undoubted ſovereign of this realm, "as well de jure, that is, of right, king, as de facto, that "is, in the poſſeſſion and exerciſe of the government; and "therefore, I do promiſe and ſwear, that I will, with heart "and hand, life and goods, maintain and defend his right, "title, and government, againſt the deſcendants of the per- "ſon who pretended to be the prince of Wales, during the "life of the late king James, and ſince his deceaſe pretend- "ed to be, and took upon himſelf, the ſtyle and title of "king of England, by the name of James III, or of Scot-

[zz] Appendix i.
[a] 1 Geo. I, 13.
[b] 1 Hale's Hiſt. 63.

§ 6. OATHS TAKEN BY JUSTICES.

" land, by the name of James VIII, or the ſtyle and title " of king of Great Britain; and their adherents, and all " other enemies, who, either by open or ſecret attempts, " ſhall diſturb or diſquiet his majeſty in the poſſeſſion and " exerciſe thereof."

THE oath of abjuration was introduced by 6 Anne, ch. 14; but alſo materially altered by the ſtatute 6 Geo. III, c. 53.

IT preſently is as follows:

Oath of abjuration.

" I, A B, do truly and ſincerely acknowledge, profeſs, " teſtify, and declare, in my conſcience before God and " the world, that our ſovereign lord king George, is lawful " and rightful king of this realm, and all other his majeſ- " ty's dominions and countries thereunto belonging. And " I do ſolemnly and ſincerely declare, that I do believe in " my conſcience, that not any of the deſcendants of the " perſon who pretended to be prince of Wales, during the " life of the late king James II, and ſince his deceaſe pre- " tended to be, and took upon himſelf the ſtyle and title " of, king of England, by the name of James III, or of " Scotland, by the name of James VIII, or the ſtyle and " title of king of Great Britain, hath any right or title what- " ſoever to the crown of this realm, or any other the do- " minions thereunto belonging. And I do renounce, refuſe, " and abjure, any allegiance or obedience to any of them. " And I do ſwear that I will bear faith and true allegiance " to his majeſty king George, and him will defend to the " utmoſt of my power againſt all traitorous conſpiracies and " attempts whatſoever which ſhall be made againſt his per- " ſon, crown, or dignity. And I will do my utmoſt en- " deavour to diſcloſe and make known to his majeſty and " his ſucceſſors, all treaſons and traitorous conſpiracies " which I ſhall know to be againſt him, or any of them.

" And I do faithfully promiſe, to the utmoſt of my power, § 6.
" to ſupport, maintain, and defend, the ſucceſſion of the OATHS TAKEN BY
" crown againſt the deſcendants of the ſaid James, and JUSTICES.
" againſt all other perſons whatſoever; which ſucceſſion, by
" an act, intitled, an act for the further limitation of the
" crown, and better ſecuring the rights and liberties of the
" ſubject, is, and ſtands limited to the princeſs Sophia,
" electreſs and ducheſs-dowager of Hanover, and the heirs
" of her body, being proteſtants. And all theſe things I
" do plainly and ſincerely acknowledge and ſwear, accord-
" ing to theſe expreſs words by me ſpoken, and according
" to the plain common ſenſe and underſtanding of the ſame
" words, without any equivocation, mental evaſion, or ſecret
" reſervation whatſoever. And I do make this recognition,
" acknowledgment, abjuration, renunciation, and promiſe,
" heartily, willingly, and truly, upon the true faith of a
" Chriſtian."

THE oath of ſupremacy is in the following terms:

" I, A, B, do ſwear, that I do from my heart abhor, de- Oath of ſu-
" teſt, and abjure, as impious and heretical, that damnable premacy.
" doctrine and poſition, that princes excommunicated, or
" deprived by the pope, or any authority of the ſee of Rome,
" may be depoſed or murdered by their ſubjects, or any other
" whatſoever. And I do declare, that no foreign prince,
" perſon, prelate, ſtate, or potentate, hath, or ought to have,
" any juriſdiction, power, ſuperiority, pre-eminence, or au-
" thority, eccleſiaſtical or ſpiritual, within this realm. So
" help me God."

THIS oath was impoſed by the ſtatute 1 Geo. I, c. 13, § 1, upon all officers civil and military; but, Mr. Erſkine obſerves, has never been adopted in our practice [c].

[c] Inſtitute, b. i, tit. 11, § 33.

§ 6. OATHS TAKEN BY JUSTICES.

THESE oaths muſt be taken and ſubſcribed by every juſtice, within ſix months, at the general or quarter-ſeſſions of the peace where he ſhall be, or reſide. There is a clauſe of indemnity, in ſome act, almoſt every ſeſſion of parliament, to give farther time to juſtices of the peace to take the oaths. But the indemnity is not extended to perſons againſt whom final judgment ſhall have been given, nor to exempt any ſuch juſtice from ſuch penalties who ſhall act without being duly qualified.

If taken only once.

BY the ſtatute 1 Geo. III, ch. 13, § 2, it is provided, that ſuch as have once taken the oaths under a writ of *dedimus poteſtatem*, ſhall not be obliged, upon the iſſuing of a new commiſſion, to ſue out, or have any other *dedimus poteſtatem* from the clerk of the crown; but the clerk of the peace, or his deputy, ſhall, on every new commiſſion being iſſued, prepare a parchment roll, with the oaths annexed to, and uſually taken under the ſaid writ of *dedimus poſtetatem*, engroſſed on ſuch roll, and ſhall adminiſter, without fee, to ſuch juſtices, the oaths in ſuch roll ſpecified; which juſtices, having taken the ſaid oaths, ſhall ſubſcribe their names on the ſaid parchment roll; and the ſaid roll ſhall be kept among the records of the ſeſſions.

BUT, by the 7 Geo. III, c. 9, ſuch perſons as have been, or ſhall be, appointed juſtices, by any commiſſion granted by his preſent majeſty, and have taken and ſubſcribed, or ſhall take and ſubſcribe, the oaths mentioned in the ſaid act of 1 Geo. III; and ſuch perſons as ſhall be appointed juſtices by any commiſſion which ſhall be granted after his majeſty's demiſe, by any of his ſucceſſors, and ſhall have, after iſſuing the firſt commiſſion, whereby ſuch perſons ſhall be appointed juſtices in the reign of any ſucceeding king, taken and ſubſcribed the ſaid oaths, ſhall not be obliged, during the reign of his preſent majeſty, or during any future reign, in which ſuch oaths ſhall have been ſo taken and ſubſcribed,

aforeſaid, to take and ſubſcribe the ſame oaths, by reaſon of ſuch perſons being again appointed juſtices by any ſubſequent commiſſion which ſhall be granted during any ſuch reign. That is, they ſhall not be obliged to take and ſubſcribe the ſaid oaths more than once in the ſame reign. The parchment roll, containing the oaths and ſubſcription of the juſtices, is kept among the records of the ſeſſions.

§ 6. OATHS TAKEN BY JUSTICES.

VII. JUSTICES of the quorum were a ſelect number, ſpecially ſworn for their knowledge in the law. This diſtinction never appears to have obtained in this country; and in effect is now done away even in England; as it has long been uſual to repeat the whole names over in the quorum clauſe. But this only expreſſes the confidence of the crown in the knowledge and attention of *all* the juſtices, "ſince "all ſtatutes that require the preſence of the quorum do "tacitly ſignify ſuch a learned man[d]."

§ 7. QUORUM OF JUSTICES.

VIII. BY the general ſtatutes above mentioned[e], it was provided, that the juſtices "ſhall have, during the time of "ſeſſions, for every day of their abode (ſo it do not ex- "ceed the number of three days at the moſt at one time), "allowed to every one of them fourty ſhillings of Scots "money dayly, to be paid and uplifted by the collector of "the fines; but neither lord, biſhop, privy-counſellor, or "ſeſſiones, ſhall have any ſuch allowance."

§ 8. PAYMENT OF THE JUSTICES.

What juſtices are not entitled to payment.

ON the other hand, it was provided[f], "that all ſuch juſ- "tices as have the benefit of that allowance, and ſhall be "abſent from every ordinary quarter-ſeſſions, or otherwiſe, "when he is required lawfully by the *cuſtos rotulorum*, to "attend any particular meeting, ſhall incur the penalty of

What juſtices liable to be puniſhed by fine for non-attendance.

[d] Burns, tit. Juſtices, § 2.
[e] Acts 1617, § 25, and act 1661, § 26. See Appendix i.
[f] Ibid.

§ 8. PAYMENT OF THE JUSTICES.

"40l. Scots money, not being lawfully excuſed, and the excuſe allowed by the juſtices there aſſembled."

How are juſtices indemnified for expence incurred in extraſeſſional buſineſs?

AND though juſtices of the peace receive no pecuniary recompence for their very important extraſeſſional ſervices, yet they are, as is juſt and reaſonable, always indemnified for any pecuniary diſburſements, or expence they may incur on account of the public, either on giving a note of it to the ſheriff, who will preſent it, with his other accounts, in exchequer, or, in leſſer matters, from ſome county fund, ſuch as the *rogue money* [g].

§ 9. EXPIRY OF THE OFFICE; by the king's demiſe, or ſix months after.

IX. THE office of juſtice of the peace, which is held by virtue of the commiſſion, naturally expires by the demiſe of the ſovereign; but, by ſpecial ſtatute [h], it endures for ſix months after, unleſs in the mean time it be made void by the ſucceſſor. And, for the ſame reaſon, it may be recalled at his majeſty's pleaſure, either expreſsly by writ under the great ſeal, or tacitly, by omitting the name in a new commiſſion. But, until notice, or publication of the new commiſſion, the acts of the juſtices under the former one are valid [i].

BUT the king's death does not determine the authority of thoſe who are conſervators of the peace by virtue of letters-patent, or ratified charters; which cannot be recalled, unleſs they be forfeited, and the liberties ſeized, on account of ſome great miſdemeanour, or general defect, in the execution of their powers [k].

[g] From the records of the ſeſſions of the county of Edinburgh, it appears frequently to have happened that the clerk or collector was in advance, from the expence of proſecutions, and other expences which he had diſburſed. In ſuch caſes it was cuſtomary to ordain him to retain for his reimburſement the fines and other public money that ſhould come into his hands. A practice, in more than one reſpect exceptionable.

[h] 1 Anne, ſt. i, ch. 8, § 2.

[i] Dalt. ch. iii. Burns, tit. Juſtices.

[k] Ibid.

§ 10. OFFICERS OF THE JUSTICES.

X. ONE of the juſtices is appointed by the king *cuſtos rotulorum*, and inveſted with ſpecial powers. This office is not in uſe amongſt us. The name occurs however in Cromwell's inſtructions to the juſtices of peace, as well as in the two general ſtatutes, 1617 and 1661 [l].

Clerk.

THE clerk of the juſtices, or quarter-ſeſſions, is named by the ſecretary of ſtate [m].

Muſt the clerk be a notary?

THE clerks, according to lord Bankton [n], of all inferior courts ought to be notaries. His lordſhip founds his opinion upon two ſtatutes of James V [o], and upon the authority of Craig, who mentions the reduction of a baron decree, becauſe the clerk was not a notary; and expreſsly ſays, notarius in omnibus judiciis intervenire debet, qui quæ dicuntur et fiunt in acta curiæ redigat [p].

[l] "That we had ſuch a *cuſtos rotulorum* (obſerves Mr. Forbes, Juſtice of Peace, preface, p. 4.) as they have in England, is clear from the firſt commiſſion for keeping of the peace within the ſhire of Edinburgh, under the great ſeal, dated 28th Auguſt 1610; wherein Sir James Foulis of Collingtoun, one of the juſtices of peace therein named, was appointed cuſtos rotulorum, cum poteſtate nominandi amanuenſem, ſeu ſcribam, qui ſcripta omnia ad hujuſce commiſſionis executionem ſpectantia in notam redigat, et publicis ſchedis inſerat."

[m] Parl. Ja. VII, 1686, ch. 20. The act 1685, cap. 16, *inter alia*, empowered juſtices to nominate their own clerk. But this clauſe was doubly repealed; firſt, by the laſt-mentioned act 1686, and afterwards by the general reſciſſory act 1690, c. 28.

[n] B. iv. ch. 4, § 9.

[o] 1540, ch. 78 and 81.

[p] Lib. iii. dig. 7, § 20.

Hic autem ſcriba, ſive clericus, ſemper notarius eſſe debet, ut ſenatus, in cauſa inter dominum de Keir et Hamiltonum de Pardovan interlocutus, nam eam ſententiam quam Barocuriæ pronunciaverat retractavit, ex ea ſola cauſa, quod clericus curiæ non fuiſſet notarius. Ibid.

Notaries derive their name from taking notes of things to extend more regularly afterwards (ibid. l. ii, d. 7. § 7.) The introduction of the ſolemnity of the inſtruments of notaries, was, becauſe of old few could write, and the impreſſion of ſeals was eaſily imitated (Stair, b. i, t. 3.) Notaries were either apoſtolical or imperial. The former were eſtabliſhed in the firſt ages of chriſtianity to preſerve the ſayings of the martyrs. And afterwards, deriving their au-

§ 10. OFFICERS. Duty of the clerk.

THE clerk of the ſeſſions, though an officer of in dignity and importance to the *cuſtos rotulorum* in Eng

thority from the pope, prevailed in all places under the papal hierarchy. They appear to have been recogniſed in Scotland before the reign of James III; for the act formerly mentioned, requiring all notaries to be appointed by the king, provides, " that " full faith be given to the papall " notaries *in time bygane* in all their " inſtrumentes." After the reformation, miniſters were prohibited from acting as " notaries in ony matters " (the making of teſtamentes only " excepted.)" James VI. c. 133, 1584.

Imperial notaries derived their authority from the civil power. Some lawyers pretended that the creation of notaries belonged to the emperor, but not to kings. Our ſtatute therefore, James III, c. 30 (1469), in reference to this doctrine, declares, that " notars ſuld be maid be the king, " and not be the emperour." Various ſtatutes have been ſince paſſed, reſpecting the admiſſion and behaviour of notaries. By an act of queen Mary's (1563, c. 79), all notaries were to " be made by the " queen's letters, and thereafter exa- " mined and admitted by the lords " of ſeſſion." " But now" (ſir Geo. Mackenzie obſerves, p. 168) " they " need no letters from the king, but " depend upon the clerk of regiſter " and his depute, the clerk to the " notaries. The clerks of ſeſſion are, " by their admiſſion as ſuch, notars, " though they be not admitted in " manner mentioned in this act." An act of ſederunt (1595, Dec. 31.) anent the admiſſion of notar vides, " that thay haif ſum hoi " duſtrie and moyane to leve " exerciſe of that office: Tha " be paſſed the twintie-fyft " their aige, and be hable to " weill and correctlie, and to " ſtand and form onie evident " tin or Inglis, belonging to " fice of an notar; the partict " which evidentis the ſaidis " remittis to the diſcretion " ſaidis examinators and ſicklik " they have been ſervandes o " tiſes by the ſpace of five y " before, with ſome honeſt a " mous notar, and produce hi " ter's teſtimonial of his hone " dewtiful behaviour and dili " the tyme of his ſervice, a " yeir of his age; and forder, " thaime on ony uther requiſit " that the ſaides examinatour " meitt; and efter dew triell l " thame in the premiſſes, the " lordis ordanis thame to rep " thair preſence the hability or " bilitie of the perſon preſen " the effect they may admit or " according thairto the pre " tion." By another act of ſed notaries are prohibited from ſul ing writs for any perſon who write, unleſs they know that th ſons for whom they ſubſcribe a perſons deſigned in the writ, o the ſame is atteſted by witneſſe ſubſcribe the writ, or by othe dible perſons; and the notary mention this when he ſubſcribe July 1688. In the caſe of a de

has the keeping of the books, and the regiſtration of things in them. § 10. OFFICERS.

CLERKS of inferior courts [q] were prohibited, by a ſtatute of James VII, to regiſter in their books any thing in which the court is not competent, under pain of deprivation, and being fined five hundred merks. Clerk.

BY particular Britiſh ſtatutes, ſome matters which the juſtices have no further cogniſance of, are ordained to be recorded in the books of the ſeſſions. As, for example, by 33 Geo. III, c. 54, the regulations of friendly ſocieties muſt be exhibited in writing to the juſtices at the ſeſſions, or adjournment thereof, for the county and place where ſuch ſociety ſhall be eſtabliſhed; and if approved of, and confirmed by the juſtices, ſhall be ſigned by the clerk of the peace at ſuch ſeſſions; and a duplicate thereof on parchment ſhall be depoſited with, and filed by, the clerk of the peace at ſuch ſeſſions without fee; beſides, perſons are ordained to qualify themſelves by taking certain oaths before the ſeſſions.

THE charge of all this buſineſs belongs to the office of clerk.

26 GEO. II, cap. 14, after regulating the fees to be exacted in the juſtice of peace court, ordains a table thereof to be depoſited with the clerk of the peace, who is to cauſe a true copy to be conſtantly kept in a conſpicuous part of the room where the ſeſſions are held, under the penalty of 10l.

ecuted by a perſon who is blind, or who can neither read nor write, the reading it over to him, in preſence of the witneſſes, was found, by a late deciſion, not to be a ſolemnity neceſſary to be mentioned by the notary in his doquet, though it may be proper and neceſſary to take place as a precaution againſt fraud, and that the witneſſes may be able, if called upon, to eſtabliſh the fact. 1794, Dec. Yorkſton againſt Mary Grieve.

[q] 1685, cap. 38.

§ 10. OFFICERS.

Collector.

THE ſeſſions are ordained to appoint a ſufficient collector for uplifting the fines and penalties, which they have power to impoſe [r]. But this officer is now more generally known under the name of fiſcal; a term which does not occur in any of our ſtatutes. The collector is named by the ſeſſions, levies the fines, and diſburſes neceſſary expences, at the command of the juſtices. As public proſecutor, he gives his inſtance, or concurrence, in the ſteps neceſſary to be taken for the apprehenſion or proſecution of delinquents [f].

Who act as procurators before the juſtices.

THE procurators of the ſheriff and other courts practiſe before the juſtices; regularly, however, they ſhould be entered by the ſeſſions [t]. The practitioners of the ſupreme courts

[r] 1661, § 26.

[f] It appears from the records of the juſtices of the peace of the county of Edinburgh, that the three offices of clerk, collector, and fiſcal, were originally held at the ſame time by different perſons. It was found convenient, and ſoon became cuſtomary, to appoint one perſon to the two laſt offices. The ſeparate office of collector thus grew into diſuetude. But, for ſome time, after it had become cuſtomary for both offices to be held by the ſame individual, there ſtill continued to be a ſeparate appointment to each.

The fiſcal appears, for the firſt time, in thoſe records, upon the 9th September 1707: "Thereafter, it "was repreſented, that there ought "to be a fiſcal to the juſtices of "peace, which had always a relation "to the collector's office; and Ro- "bert Thomſon, being choſen collec- "tor formerly, it was thought fit "that he ſhould be choſen fiſcal; "whereupon the ſaid Robert Thom- "ſon being called, and demanded, if "he would accept of the ſaid office, "he judicially accepted the ſame; "and thereupon the oath, &c. of alle- "giance was adminiſtered to him; "which he ſwore, and did ſign, with "the aſſurance; and he was alſo "ſworn *de fideli*; and thereupon the "ſaid Robert Thomſon was admit- "ted fiſcal to all the courts of the "juſtice of peace, and he to have "right to all the emoluments there- "of, and to act and do as fully as "any fiſcal may do, and to ſubſtitute "fit perſons at the ſeveral courts "where he cannot attend himſelf, "who were to be accountable to "him; and thereupon the ſaid Ro- "bert Thomſon took inſtruments."

[t] By the 22 Geo. II, c. 46, no perſon ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at any general or quarter-ſeſſions, either with reſpect to matters of a criminal or civil nature, unleſs he is admitted and inrolled according to law; on pain of 50l. to him who ſhall ſue in twelve months, with treble coſts: and if any attorney ſhall permit any perſon to make uſe of his name in the ſaid court, he ſhall, in like manner, forfeit 50l. This ſtatute has never been underſtood to apply to Scotland.

occaſionally practiſe before the ſeſſions of the peace. In the records of the ſeſſions of the peace, we meet with the firſt legal names that have appeared in this country, as occaſional pleaders in that court.

§ 10. OFFICERS OF THE JUSTICES.

CONSTABLES are appointed by the juſtices of peace as their officers for executing their warrants, &c. But the various important duties of that office will be more fully explained below.

Conſtables.

XI. EXTENSIVE counties are uſually divided into diſtricts, for the more frequent and ſpeedy adminiſtration of juſtice. But the juriſdiction of each juſtice remains entire over the whole county. The ſentence of a diſtrict meeting, therefore, will bind perſons who do not live within the diſtrict. The juſtices of the peace of the ſhire of Ayr divided themſelves into ſeveral diſtricts. The juſtices of the diſtricts of Cunningham impoſed a penalty upon certain perſons who lived in the diſtrict of Kyle. This was objected to, and the anſwer made for the juſtices of the former diſtrict was, that they are juſtices of the peace over the whole ſhire; and that the diviſion into diſtricts is only for the more frequent meeting and ſpeedy adminiſtration of juſtice; and the perſuers their reſidence was within two or three miles of the place where the court was held. The objection was not regarded [u].

§ 11. DIVISION OF COUNTIES INTO DISTRICTS

Does the ſentence of a diſtrict meeting bind perſons living out of the diſtrict?

EACH diſtrict has a ſeparate clerk and fiſcal. The clerk muſt be named by the general clerk of the ſeſſions, to whom he is accountable; and the fiſcal, either by the general fiſcal of the county, or by the juſtices. It is found extremely inconvenient not to have thoſe public officers on the ſpot in each diſtrict; both to attend to the public intereſt, with reſpect to nuiſances, vagrants, and other matters of police;

Officers for the diſtrict.

[u] Fullerton againſt Hamilton, 19th November 1714. Dalrymple, No. 115.

§ 11. DIVISION INTO DISTRICTS.

and to be ready, at a call, to take meaſures for apprehending robbers, houſe-breakers, or other felons, when any crime has been committed. In the former caſe, when no ſuch officer is on the watch, the public intereſt is in danger of being altogether neglected, from the dubious title of any one individual, or the diſinclination, naturally felt, to diſcharge a duty equally incumbent on all. In the latter caſe, it frequently happens, that, before a return can be obtained from the county town, the delinquent may have eſcaped; and though the fiſcal's concurrence is not neceſſary, in applying for a warrant, it is certainly deſirable, if poſſible, to have the thing from the firſt done regularly, under the eye of the proper officer [x].

§ 12. CAN JUSTICES ACT WITHIN LIBERTIES?

XII. JUSTICES of peace have expreſsly, by their commiſſion, juriſdiction as well within as without liberties [y]. Liberties, ſays Mr. Burns, here mean thoſe "liberties and franchiſes "which have return of writs, and not ſuch as are counties of "themſelves, as London, Norwich, York," &c. "They may," he adds, "execute their office within any town (not being "a county within itſelf), though it have a ſpecial commiſ- "ſion of the peace for its own limits, unleſs there be alſo an "excluſive clauſe prohibiting others from acting within the "bounds [z]." And he thinks it "queſtionable whether ſuch "a ſpecial excluſive clauſe makes void the acts of the coun- "ty juſtices within the liberty; although the juſtices, who "proceed in defiance of it, may perhaps be puniſhable, as for "a contempt of the king's prohibition [a]." But he notices the caſe of Talbott and Hubble, tit. 14, c. 2, where Lee, ch. I, delivered the reſolution of the court of king's bench, that the act of the county juſtices, in ſuch caſe, would be void, and not to be conſidered only as a breach of the franchiſe. In this country, the magiſtrates of the different burghs are

Is the acts within the liberty null?

[x] Book ii, ch. i, § 3.
[y] Burns, tit. Juſtices, § 2.
[z] Ibid.
[a] Ibid.

§ 13. CAN THEY ACT BEYOND THEIR JURISDICTION.

generally inſerted in the nomination of juſtices for their reſpective counties; and throughout Scotland the county juſtices are in uſe to exerciſe their juriſdiction as freely within as without the liberties [b].

[b] "As to the power (ſays Mr. Forbes) that juſtices of ſhires here do "claim in cities within the ſame, "whoſe magiſtrates are heritable juſtices of peace, that being preſently "under debate betwixt the juſtices "of Mid-Lothian and the Town of "Edinburgh, and perhaps to be laid "before parliament; I ſhall not preſume to expoſe my private thoughts "upon ſo tender a point of juriſdiction, ſo anxiouſly diſputed on both "ſides." Forbes, part ii, p. 5. From the juſtice of peace records, it appears that this point was very warmly diſputed with the magiſtrates; who went the length, not only of diſowning the ſederunts of the juſtices, but even of preventing the execution of their ſentences within the city. On one occaſion, where the juſtices had ſentenced two thieves to be whipped through the town by the common executioner, the magiſtrates would not permit their officer to execute the ſentence. Committees, from time to time, were appointed to "commune with the magiſtrates." The latter perſiſting in their refuſal, the juſtices at laſt remitted to his majeſty's advocate to proſecute the thieves before the court of juſticiary; 10th May 1779.

Queen Anne directed her advocate, ſir David Dalrymple, to inquire into the diſpute, and report his opinion. He gave an opinion in favour of the excluſive juriſdiction of the city, as having "always been reckoned as "a ſhyre or county within itſelf, diſtinct from the ſhyre of Mid-Lothian, called the ſhyre of Edinburgh." But this opinion appears not to have been regarded in practice. The county juſtices have continued to exerciſe a concurrent juriſdiction within the liberties. Ths diſpute died away, and does not ſeem to have ever exiſted in the caſe of any other borough.

Indeed the opinion ſeems not eaſily reconcileable to the immemorial juriſdiction of the ſheriff of the county within the city. A city being a county within itſelf, would exclude the juriſdiction of that judge ordinary as much as of the juſtices of the peace.

In England, in queſtions of this kind, it would appear that much weight is given to immemorial uſage. Thus, in the caſe of Blankley v. Winſtantly, where it was adjudged that a charter granting juriſdiction to borough magiſtrates over a diſtrict not within the borough, does not exclude the county juſtices from having a concurrent juriſdiction without expreſs words in the charter. Lord Chief Juſtice Kenyon expreſſed himſelf as follows: "The propoſition "ſtated by the defendant's counſel, "from lord Hale, and which was a"dopted in the caſe Talbot v. Hubble, "namely, that the juriſdiction of coun"ty juſtices can only be taken away "by expreſs words, I have always "underſtood to be a cardinal ground "in deciſions of this kind. And this "is not more grounded in law than "inconvenience; for it does ſome"times happen in limited juriſdic-

§ 13. CAN THEY ACT BEYOND THEIR JURISDICTION.

XIII. JUSTICES of the peace execute their authority in the county wherein they are juſtices. They neither, therefore, can regularly do a judicial act out of ſuch county; nor, when they are in their county, does their power extend to other counties. A juſtice of peace, accordingly, when out of the county wherein he is juſtice, cannot by his warrant bring a perſon out of the county of which he is juſtice, to come before him in the county where he happens to be [b]; nor is any exerciſe of contentious juriſdiction (as for payment of labourers wages, or warrant for committing a felon) binding, if it takes place out of his own county [c]. But though juſtices of the peace have no coercive power out of their county, they can do miniſterial acts anywhere; ſuch as, examine a party robbed, take recogniſances and informations of conſent, and exerciſe all voluntary juriſdiction; juſt as a biſhop may grant adminiſtration, inſtitution, or orders, out of his dioceſe.

Do miniſterial acts anywhere.

Compulſory juriſdiction.

BUT a juſtice of peace cannot impriſon a perſon for not giving a recogniſance, or bail-bond, or commit a perſon for a crime; for theſe are acts of compulſory juriſdiction, which he cannot exerciſe out of his proper county [d].

" tions, that little factions and in-
" trigues ſtep in and impede the ad-
" miniſtration of juſtice. In this par-
" ticular caſe, we ſhould pauſe before
" we broke in upon the uſage which
" has prevailed for near two centu-
" ries, and which has at leaſt grown
" venerable from length of time, that
" both the county and borough juſ-
" tices have, without any objection,
" concurrently adminiſtered juſtice in
" this place," &c. His lordſhip adds,
" It is clear that uſage alone would
" not prevail againſt the expreſs pro-
" viſions of the charter: but in this,
" as in other caſes, co-temporary and
" continued uſage is a good guide for
" the conſtruction of it."

Buller, J.—" Then with regard to
" the uſage—uſage, conſiſtent with
" the meaning of the charter, has
" prevailed for 190 years paſt. And
" if the words of the charter were
" more diſputable than they are, I
" think that ought to govern this
" caſe. There are caſes in which
" this court has held that a ſettled
" uſage would go a great way to
" controul the words of a charter.
" And it is *for the ſake* of *quieting*
" *corporations that this court has always*
" *upheld long* uſage, *where it was poſ-*
" *ſible*, though recent uſage would
" not perhaps have much weight."
Durnf. Rep. vol. iii, p. 279.

[b] Bacon Abridge. vol. iii, 798.

[c] 2 Hawk. 37.

[d] 2 Hale's Hiſt. 505. Bacon Abridge. vol. iii, p. 798.

§ 13. CAN JUSTICES ACT BEYOND THEIR JURISDICTION? Exception by 28 Geo. III, c. 49, respecting two adjoining counties.

BUT ſpecial ſtatute has provided differently for ſome particular caſes. Thus, by 28 Geo. III, c. 49, any juſtice, acting as ſuch, for any two or more counties, being *adjoining counties*, may act in all matters and things whatſoever, concerning, or in anywiſe relating to any or either of the ſaid counties; and all acts of ſuch juſtice, and of any conſtable, or other officer, in obedience thereto, ſhall be as valid, good, and effectual, in law, as if they had been done in the county to which they more particularly relate. And all conſtables, and other officers, of the ſaid county to which ſuch acts relate, are required to obey the warrants, orders, directions, and acts, of ſuch juſtice ſo granted and done, and to do and perform their ſeveral duties, under the pains and penalties to which any conſtable, or other officer may be liable, for a neglect of duty [a].

Muſt reſide in one of them at the time.

BUT it is neceſſary that the juſtice be perſonally reſident in one of the counties at the time of doing ſuch act, and that the orders or directions be directly given, in the firſt inſtance, to the conſtable, or other officer, in the county to which the ſame may particularly relate.

Powers of the conſtable and officers in the execution of a warrant ſo granted.

IT is farther provided, that it ſhall be lawful for any conſtable, or other peace officer, or any other perſon, apprehending, or taking into cuſtody, any offender, and whom they lawfully may, and ought to apprehend, by virtue of their office, or otherwiſe, howſoever, to convey him to any juſtice acting for the ſaid county, and reſident in ſuch adjoining county, and ſo to act in all things as if the ſaid juſtice were reſident within the ſaid county to which they reſpectively belong. And all perſons obſtructing ſuch conſtables, or other peace officers, in the execution of their reſpective offices, in ſuch adjoining county, ſhall be liable to the ſame pains and penalties as if the ſame had been committed in the county for which

[a] § 1.

§ 13. CAN HE ACT BEYOND HIS JURISDICTION?

the ſaid conſtables, or other peace officers, were appointed to act [a].

THE ſame ſtatute makes it lawful for any ſheriff, conſtable, peace officer, or other perſon, lawfully taken into, or having in his cuſtody any offender, whom he might lawfully convey to gaol, or place of ſafe cuſtody, to convey ſuch perſon into, and through any part of, the ſaid counties ſo adjoining in the way to ſuch gaol, or place of ſafe cuſtody, within the county wherein ſuch offence was committed. And all perſons eſcaping from ſuch cuſtody, or aiding or aſſiſting ſuch eſcape, or reſcuing ſuch offender, ſhall be ſubject to the like pains and penalties as if the ſame had been done in the county wherein ſuch offence was committed [b]. And as to the latter caſe, wherein it is ſuppoſed that his power is limited unto that county only, it is enacted, by the 24th Geo. II, c. 55, that if any perſon, againſt whom a warrant ſhall be iſſued, ſhall eſcape, go into, reſide, or be in any place out of the juriſdiction of the juſtice granting the warrant, any juſtice of the place, where ſuch perſon ſhall be, upon proof, on oath, of the handwriting of the juſtice granting ſuch warrant, ſhall indorſe his name thereon, which ſhall be a ſufficient authority to execute the warrant within ſuch other juriſdiction.

Exception by 24 Geo. II, c. 55, as to *indorſation* of warrants.

Terms of the warrant.

THE juſtice may further order (if he thinks fit) the party, according as he ſhall appear bailable or not bailable upon the face of the warrant, to be brought before himſelf, or ſome other juſtice or juſtices of that county, or to be carried back into the county from whence the warrant did iſſue.

Tenants fraudulently removing their goods.

JUSTICES, either of the county from which tenants fraudulently remove goods, or of that in which they are conceal-

[a] § 2. [b] § 3.

ed, may convict the offenders in their reſpective counties. Unleſs facts are ſtated to make the contrary appear, the ſupreme courts always preſume in favour of the acts of inferior juriſdictions [a]. § 13. CAN THEY ACT BEYOND THEIR COUNTY?

ANY juſtice acting for any county at large, may act as ſuch at any place within any city, town, or precinct, being a county of itſelf, and ſituate within, ſurrounded by, or adjoining to, any ſuch county at large [b].

AND by 33 Geo. III, c. 55, § 3, where diſtreſs cannot be found in the juriſdiction of juſtices granting warrants for that purpoſe, it is provided, that the ſame may be levied in any other county or place, upon ſuch warrant being indorſed by a juſtice of ſuch other county or place. Levying diſtreſs, by 33 Geo. III, c. 55.

XIV. No maxim is more firmly eſtabliſhed, than that a judge, or magiſtrate, ought to be completely diſintereſted. A juſtice of peace, therefore, ought not to exerciſe his powers, either as a member of the court of ſeſſions, or out of the ſeſſions, in matters where he himſelf is concerned. Accordingly, the provoſt of the burgh of Rutherglen having fined and impriſoned an heritor for alleged removing of land-marks between him and other heritors, of whom the judge himſelf was one, the lords found that in that caſe he could not ſit as judge, but ſhould have declined himſelf; and that it was ſufficient ground to make him liable for the damages and wrongous impriſonment [c]. And the Engliſh court of king's bench went the farther length of "laying "the mayor of Hereford by the heels," for ſitting in a cauſe where he himſelf was leſſor of the plaintiff in ejectment, though he, by the charter, was ſole judge of the court [d]. § 14. CAN A JUSTICE OF PEACE ACT IN WHAT RELATES TO HIMSELF?

[a] *K. v. Morgan*, H. 22. G. III, Cal. Caſ. 156. Burns, tit. Juſtices, § 2.

[b] 9 Geo. III, c. 7; 28 Geo. III, c. 49, § 7. Burns, tit. Juſtices, § 2.

[c] Fount. 27th July 1711; Leitch. Dictionary, *voce* Reparation.

[d] 1 Salt. 396. Burns, tit. Juſtice. § 5.

§ 14. CAN JUSTICES ACT IN THEIR OWN CAUSE?

JUSTICES, therefore, ought rather to cauſe offenders to be carried before ſome other juſtice, or get ſome other juſtice to be preſent [a]. But, in ſome caſes, it may be juſtifiable for the juſtice of peace to act in his own cauſe; for example, if he ſhall be aſſaulted or (in the doing of his office eſpecially) abuſed to his face, he may commit ſuch offender until he ſhall find ſureties for the peace or good behaviour, as the caſe ſhall require. But, obſerves Dalton, if any other juſtice were preſent, it were fitting to deſire his aid [b].

NEITHER can a juſtice ſit as a member of the ſeſſions in any cauſe which concerns himſelf [c]. This was diſapproved of by the king's bench, in a caſe where a juſtice of peace was ſurveyor of the highways, and a matter which concerned his office coming in queſtion at the ſeſſions, he joined in making the order, and his name was put in the caption. Lord chief-juſtice Holt ſaid, "it ought not to be; "as if an action be brought by my lord chief-juſtice Tre- "vor in the court of common pleas, it muſt be before Ed- "ward Nevill and his aſſociates, and not before Thomas "Trevor," &c. It was quaſhed, or diſmiſſed [d].

16 Geo. II, c. 18, exception touching parochial taxes.

BUT, by the 16th Geo. II, cap. 18, § 1, it is lawful for every juſtice of peace, within his juriſdiction, to execute every thing appertaining to his office, ſo far as the ſame relates to the laws concerning the poor, vagrants, highways, or other laws concerning parochial taxes, levies, or rates, notwithſtanding he is chargeable with ſuch taxes within any ſuch pariſh or place affected by ſuch his acts.

No act already done by ſuch juſtice ſhall be void, becauſe himſelf is rated.

[a] Dalt. cap. 173.

[b] Dalton, c. 173. Bac. Abridgement, vol. iii, p. 801.

[c] H. 3. An.

[d] 2 Salk. 607. Burns, tit. Juſtices, § 5.

§ 14. CAN JUSTICES ACT IN THEIR OWN CAUSE?

BUT this act does not empower any juſtice for any county or riding at large, to act in the determination of any appeal to the quarter-ſeſſions for any ſuch county, from any order or thing relating to the pariſh or place where ſuch juſtice is ſo charged.

THE late ſtatute, 39 Geo. III, c. 56, in favour of colliers, giving certain powers to juſtices of peace, provides, that no coal-maſter, or leſſee of coal, ſhall act as a juſtice of peace under this act; and, in like manner, in exciſe matters, the acts 15 Car. II, and 14 Geo. II, prohibit juſtices concerned in particular trades from acting as juſtices in any informations reſpecting thoſe trades.

§ 15. JUSTICES OF THE PEACE, WHEN PUNISHABLE.

"JUSTICES of peace," Mr. Forbes obſerves [a], "formerly "were cenſurable by the privy-council of Scotland for any "miſcarriage in their office; and now, in conſequence of "the Union, are anſwerable for their good behaviour to the "privy-council of Britain."

BESIDES, they act under the review of the ſupreme judicatures of the country; and are liable, according to circumſtances, either, criminally, before the court of juſticiary, or, for pecuniary reparation, before the court of ſeſſion. The plea that juſtices of the peace cannot be called to account in the courts of ſeſſion or juſticiary, has been frequently ſtated, but uniformly repelled [b].

[a] Juſtice, part ii, c. 1, § 30.

[b] Thus ſir John Carnegie of Pittarrow, and John Arbuthnot of Fordoun, being proſecuted, at the inſtance of Mr. John Blair, agent for the kirk, and of Sir James Stewart, her majeſty's advocate, as art and part, of a violent intruſion into a church, had recourſe to this defence, among many others, that, on the occaſion libelled, they had been acting in their official capacity as juſtices of peace in ſettling a miniſter; and that, for what they did in their office, they were reſponſible only to king and council. It was anſwered, that they had exceeded the bounds of their commiſſion, and been guilty of a violence and riot; which was only ſo much the more blameable for that

§ 15. JUSTICES, WHEN PUNISHABLE.

BUT juſtices of peace not being profeſſional men, nor deriving any perſonal emolument from the diſcharge of their

very reaſon. "The court repelled "their defences." Jan. 10, 1709.

A ſimilar deciſion was pronounced in the following caſe, which alſo involved another point, that will come under our notice afterwards, viz. an interference of the different juriſdictions within the ſame territory:

The preſbytery of Kirkwall had found a man, of the name of Oliver Turk, guilty of adultery, and appointed him to be cenſured, agreeably to the forms of the church. The man applied to the juſtices of peace of the county, who pronounced a judgment, finding that there was no proof of the adultery; but appointing both the man and woman, as guilty of ſcandalous behaviour, to give ſatisfaction after another manner. The miniſter brought the juſtices, by indictment, before the court of juſticiary; who found their "appointing Oliver Turk "to ſatisfy church diſcipline in an "other manner than was appointed "by the preſbytery and kirk-ſeſſion "of Kirkwall, and ſending to proteſt "againſt the miniſter for not receiv-"ing the delinquent, relevant to infer "an arbitrary puniſhment." 1712, Auguſt.

The preſbytery of Kirkwall, on a reference, had ſentenced William Stainſgirth and Katharine Brown, his ſpouſe, to ſtand in ſackcloth, in their pariſh church of Birſay, as guilty of the crime of ſorcery. They gave in a complaint to the juſtices, ſtating, that this procedure was occaſioned by their pariſh miniſter, who was one of the reverend preſbytery, and had purſued them with unrelenting malice ever ſince he had ſtole a ſheep from them. The fact turned out to be, that the miniſter had pounded the ſheep in conſequence of an order from the baron-bailie. After a variety of procedure, too long here to recite, the juſtices inflicted a fine upon the miniſter of 40 ſhillings, and ordained him to be rebuked or admoniſhed. The miniſter preſented an indictment to the court of juſticiary, againſt the juſtices, for illegal oppreſſion, &c. The informations on either ſide are learned and elaborate. The juſtices chiefly pleaded, that though the ſentence might be null, the judge was not puniſhable, without palpable injuſtice, or *malus animus*. The lords found, "that there is no "ſuch groſs malverſation libelled, as "to infer a puniſhment againſt the "ſaid juſtices." 1712, 1ſt Auguſt; reverend Mr. Sands and others againſt captain James Moodie and others.

Only one other caſe ſhall be mentioned. The baron-bailie of Dunſe made an act, that none ſhould waſh leather or ſkins in a certain damhead in that barony, under the penalty of 3l. Scots. Some perſons exerciſing the buſineſs of tanning and dreſſing leather, gave in an application to the juſtices, complaining of this regulation, and craving redreſs. The juſtices ordained the baron-bailie to give in anſwers; and alſo that the damhead, in the meanwhile, ſhould be uſed as formerly. The complainers took the benefit of this permiſſion. The baron-bailie, offended at their diſobeying his prohibition, impoſed a fine upon them, and impriſoned them till payment. The juſtices, taking offence at this, as an inſult to their authority, ordained the

various and important duties, are entitled to great indulgence and protection. § 15. JUSTICES, WHEN PUNISHABLE.

THEY are not liable in damages, ſtill leſs in puniſhment, although they act illegally, unleſs they alſo act corruptly.

THIS rule may perhaps apply to juſtices alſo when acting *miniſterially*. At leaſt the error to be puniſhable, or a ground of awarding damages, muſt be groſs and palpable. There are caſes, however, where no integrity of intention can excuſe a deviation from the letter of the law. The perſonal liberty of the ſubject is carefully protected; and illegal, or informal, attacks upon it, ſeldom eſcape with impunity. If a magiſtrate incarcerates a perſon, without obſerving all the requiſites of the act 1701, *bona fides* will not, in general, ſave him, as guilty of *wrongous impriſonment*, from being ſubjected in damages. Lenity and indulgence ſhewn to them.

WHEN juſtices, again, are acting as a court in the exerciſe of their judicial powers, it muſt be a very ſtrong caſe indeed, with flagrant proof of their having acted from corrupt motives, that will make them perſonally liable. But "where "the iniquity and partiality of an inferior judge, or clerk, "is very groſs and palpable, ſo that it looks like *dolus*, or "*lata culpa*, the court of ſeſſion," ſays Lord Fountainhall,

complainers to be ſet at liberty. The conſtables executed their ſentence. The baron-bailie reincarcerated them. Upon this the juſtices, not only again ordained the complainers to be ſet at liberty, but proceeded to the more deciſive ſtep of impoſing a fine upon the baron-bailie himſelf, and granted warrant to apprehend him for payment of it. The baron, Mr. Hay of Drummelzier, now interfered, and preſented an indictment to the court of juſticiary againſt the juſtices. The libel bore, "whereas all unwarrant-"able uſurpation or juriſdiction, "maſterful or wilful encroachment "and inſults on any juriſdiction con-"ſtituted in favour of any private per-"ſon," &c. The court aſſoilzied the juſtices (diſmiſſed the action.) But, amidſt the various defences pleaded in long papers, the juſtices did not pretend to decline the ſupreme criminal tribunal to review their official conduct. 1731, Feb. 2; Hay of Drummelzier againſt Cockburn of Langton, &c.

§ 15. JUSTICES, WHEN PUNISHABLE.

" will ſuſtain action, and will find a judge, or clerk, liable " for repayment of the ſum ſo unjuſtly decerned [a]."

IN England it is ſaid, " that a juſtice of peace is not pu- " niſhable at the ſuit of the party, but only at the ſuit of " the king, for what he doth as judge, in matters which he " hath power by law to hear and determine without the " concurrence of any other, for regularly no man is liable " to an action for what he doth as judge [b]." If this means, that in no caſe a private party may bring a civil action of damages for reparation of injuſtice done to him by a judge through malice or corruption, the principle has not been admitted into our law; in which the only diſtinction that obtains betwixt the reſponſibility of a juſtice of peace, when acting miniſterially, and when acting judicially, is this, that in the one caſe mere error and ignorance ſometimes ſubjects in damages; in the other, the error muſt be wilful. Accordingly, in the caſes juſt now quoted from the juſticiary records, the indictments were at the inſtance of private proſecutors. And while ſcarcely one inſtance occurs of the puniſhment of a judge at the ſuit of the crown, actions of damages at the inſtance of private parties abound in our records. Thus, the private party having proſecuted certain juſtices of the peace who had granted an act of warding for recovery of a civil debt, the court of ſeſſion, while they aſſoilzied them from the concluſion for damages, thought it neceſſary to put their abſolvitor upon the expreſs ground of the *communis error*; in conſequence of which, that illegal practice had been long unchallenged in thoſe parts of the country [c]. And in a late action of damages at the inſtance of a private party againſt certain juſtices of peace, for improper judicial proceedings againſt him, not only had the court of ſeſſion no difficulty to refuſe a demand made by the defenders, that the purſuer ſhould find caution for expences

a 1679, January 24. Vol. i, p. 37.

b Bac. Abrid. v. Juſtices, F.

c 1754, July 9; Blaw of Caſtlehill againſt Robert Geddes and other juſtices of peace.

in caſe of his not ſucceeding in the action; but it was obſerved from the bench, that though complaints againſt inferior judges or magiſtrates would not be readily liſtened to, yet the door was not to be ſhut againſt any perſon complaining of wanton or wilful oppreſſion, and that the ſecurity of judges and magiſtrates, however deſirable, is not to be maintained at the expence of the rights and liberties of the ſubject[a]. § 15. JUSTICES, WHEN PUNISHABLE;

THE principle, indeed, in favour of thoſe exerciſing judicial functions, is carried ſo far, that, even where damages are awarded to the private party, it is rather againſt any other perſon who is to blame for the judgment, than againſt the judge who pronounced it. Thus, in a late caſe[b], the dean of guild (the procedure of whoſe court is ſummary) having granted warrant of impriſonment, without the requiſite preliminaries, and an action being brought by the perſon injured, concluding for damages againſt the private party, and againſt both the judge and the procurator-fiſcal, the court of ſeſſion, while their lordſhips were clear that the impriſonment was illegal, yet aſſoilzied the judge, who was not ſuſpected of being intentionally to blame, and awarded damages againſt the procurator-fiſcal, whoſe buſineſs it was thought to be to know the forms of court, and prevent the irregularity.

JUSTICES of peace, Dr. Burns obſerves, are not liable to be puniſhed both criminally and civilly on the ſame account; and the party will not be allowed to inſiſt in the criminal proſecution till he relinquiſh the civil action, ſhould it be already commenced[c]. not both in a civil and criminal action.

So far is this carried in England, that, "even in the caſe "of indictment[d], and though the indictment be already

[a] Bell againſt Maxwell and others, January 1799.

[b] 1798, Dec. 18; William Butter againſt John Gloag and others.

[c] Burns, tit. Juſtices of peace, § 6.

[d] Indictment is a criminal proſecution at the ſuit of the king, demanding puniſhment for an offence

§ 15. JUSTICES, WHEN PUNISHABLE.

" found, yet the attorney-general, on application made to " him, will grant a *noli proſequi* [a] upon ſuch indictment, if it " appear to him that the proſecutor is determined to carry " on a civil action at the ſame time [b]."

ANOTHER privilege is beſtowed on this magiſtracy by the 7 James VI, c. 5; by which it is enacted, that if any action " ſhall be brought againſt a juſtice for any thing done by " virtue of his office, he may plead the general iſſue, and " give the ſpecial matter in evidence; and if he recovers, " he ſhall have double coſts [c]." And by the 21 James VI, c. 12, ſuch action ſhall not be laid but in the county where the fact was committed.

A STILL more important ſecurity in favour of juſtices of peace, is, the 24 Geo. II, c. 44, by which it is provided, that no writ ſhall be iſſued out againſt, or copy of any pro-

againſt the public, in contradiſtinction to appeal; which is an accuſation by one private ſubject againſt another for ſome heinous crime demanding puniſhment on account of the particular injury ſuffered, rather than for the offence againſt the public. Blackſtone, b. iv, ch. 23, p. 312.

[a] This power of quaſhing criminal actions does not belong to the lord advocate, who cannot refuſe his concurrence to any criminal proſecution which the private party is willing to carry on at his own expence. This will come under our view afterwards.

[b] Bur. Manſf. 719. K. & Fielding, H. 32. G. 2. Burns, tit. Juſtices of Peace.

[c] This relates to a peculiarity of Engliſh form, not applicable to our courts. " The *general iſſue* is what " traverſes, thwarts, and denies at " once, the whole declaration, with- " out offering any ſpecial matter " whereby to evade it," &c. " Formerly it was ſeldom pleaded, except when the party meant wholly " to deny the charge alleged againſt " him. But when he meant to diſtinguiſh away, or palliate the " charge, it was always uſual to ſet " forth the particular facts in what " is called a ſpecial plea, &c. But " the courts have of late, in ſome inſtances, and the legiſlature in many " more, permitted the general iſſue " to be pleaded, which leaves every " thing open,—the fact, the law, the " equity of the caſe; and have allowed ſpecial matter to be given " in evidence at the trial. And " though it would ſeem as if much " uncertainty and confuſion would " follow from ſo great a relaxation " of the ſtrictneſs anciently obſerved, yet experience has ſhewn it to " be otherwiſe." Blackſtone, b. iii, ch. 20, p. 305.

ceſs, at the ſuit of a ſubject, ſhall be ſerved on any juſtice for any thing done by him in the execution of his office, until notice, in writing, ſhall have been given to him, or left at his uſual place of abode, by the attorney for the party, one month before the ſuing out, or ſerving the ſame, containing the cauſe of action, and indorſed with his name and place of abode, for which he ſhall be entitled to a fee of twenty ſhillings, and no more [a].

§ 15. JUSTICES, WHEN PUNISHABLE.

THE benefit of this laſt ſtatute was found to extend to juſtices of peace in Scotland, by a deciſion of the court of ſeſſion; which was, however, reverſed on appeal [b].

BUT although the phraſeology of this ſtatute be entirely Engliſh, this circumſtance which is common to it, with many ſtatutes confeſſedly Britiſh, ſeems ſcarcely ſufficient evidence that it was not intended to include Scottiſh juſtices of peace, who are certainly entitled to the ſame protection and encouragement with their Engliſh brethren [b], in the execution

[a] § 1.

[b] Duke of Douglas againſt Lockhart, 18th December 1753. The ſuit was for malverſation in office as juſtice of the peace. And as the deciſion of the laſt reſort in this very important caſe has been ſo generally diſapproved of, and as the application of ſtatutes to this country is ſtill a matter often of much difficulty, no apology perhaps will be neceſſary for quoting the pleadings at ſome length, conducted by the ableſt counſel then at the bar.

Ferguſon, Miller, and Swinton, for the defender, pleaded the ſtature 24 Geo. II, cap. 44, reſting chiefly upon the laſt clauſe, by which it is provided, that no action ſhall be brought againſt any juſtice of the peace for any thing done in the execution of his office, or againſt any conſtable, head burrough, or other officer or perſon, acting as aforeſaid, unleſs commenced within ſix kalendar months after the act committed.

Lockhart and Pringle for the purſuer, anſwered: The ſtatute does not extend to Scotland: for, that the *Engliſh law words uſed, and the Engliſh law forms referred to in this ſtatute, implied a limitation of it to England.* Particularly, it mentions only vexatious actions brought againſt juſtices of peace, where the trial of theſe actions is by a jury; therefore the remedy provided by the ſtatute cannot be applied to actions brought againſt juſtices in Scotland, where trial by jury in civil caſes is unknown. That, although

§ 15. JUSTICES, WHEN PUNISHABLE.

of thoſe powers and duties, which are now the ſame throughout all the kingdom.

the laſt clauſe of the ſtatute is rather more general than the others, yet it cannot be taken ſeparate from the others, but the whole muſt be extended or reſtricted together. *In general, that it were of dangerous conſequence to the law of Scotland to admit of all the Britiſh acts which are not expreſsly limited to England; for in that caſe many acts, altogether inconſiſtent with our law, and which were never ſuppoſed to extend to Scotland, would be introduced into it.* Inſtances of this are, 7 Anne, cap. 18; 8 Anne, cap. 14; 9 Anne, cap. 20; 10 Anne, cap. 20; 12 Anne, cap. 7; 12 Anne, ſeſſ. 2, cap. 23; 4 Geo. I, cap. 12; 11 Geo. I, cap. 29; 20th Geo. II, cap. 19.

Replied for the defender, that ſince the Union all acts of parliament muſt be conſtrued to extend to both kingdoms, except ſuch where limitation to one of them is either expreſſed or implied. *That as it frequently happens that Engliſh lawyers are employed to frame the bills in parliament, ſo theſe gentlemen naturally make uſe of the words, and refer to the forms, of that law in which they are moſt verſant, without any intention of limitation to England; and, therefore, when there is equal reaſon for extenſion to both kingdoms, the uſe of words, or reference to forms known in the Engliſh law only, in caſe theſe words and forms can be tranſlated into our law, will not imply limitation to England.* To verify this, many inſtances may be given; in ſome of which trials by jury of civil caſes ſeem to have been as much in the eye of the legiſlature as in the caſes now debated; particularly the acts of indemnity, 1 Geo. I, ſeſſ. 2, cap. 39; 19 Geo. II, cap. 20; the acts againſt gaming, 9 Anne, cap. 14; 12 Geo. II, cap. 28; 18 Geo. II, cap. 34; the ſtage act, 10 Geo. II, cap. 28; upon which judgments have been given by this court, although the laſt clauſe of it is liable to the like objection as the clauſe in queſtion. See alſo the annual mutiny acts, as well as 12 Anne, ſeſſ. 2, cap. 16; 12 Geo. II, cap. 21; 15 Geo. II, cap. 28; 18 Geo. II, cap. 10; and 24, § 4; 19th Geo. II, cap. 21 and 37; 23 Geo. II, cap 13; 25th Geo. II, cap. 39. Further, were the uſe of words, or references to forms, ſufficient to imply a limitation to England, what would be the uſe of an expreſs limitation in many caſes, as in 4 Geo. I, cap. 11; 2 Geo. II, cap. 25; 9 Geo. II, cap. 36?

In this caſe the lords, by their firſt interlocutor, found the act to extend to Scotland, but they did not give coſts. By their ſecond interlocutor, they found the act did not extend; but by their third and fourth interlocutors, they adhered to the firſt, and found the act extends to Scotland.

It has been verbally handed down at the bar, that the duke of Argyle, and the other peers who took the lead in obtaining the reverſal of the judgment of the court of Seſſion, reſted chiefly on this ground, that Scotland was not mentioned in the act: a principle, certainly, which has not governed the conſtruction of other ſtatutes, as we ſhall have occaſion to notice in ſubſequent parts of the work.

CHAP. II.

Of the Sessions of the Peace.

§ 1. THE CONSTITUTION AND POWERS IN GENERAL.

1. WE are now arrived at what Lambard calls [a] "thoſe "matters of greater weight which do require "the ſolemne bench and figure of judgment."

But the ſeſſions of the peace are ſeldom without the aid of ſkilful and experienced juſtices; to whom written inſtructions, to uſe the language of the ſame author, are only "ſetting a candle in the ſunſhine, and rather bewray want "in the writer, than bring help or light unto them [b]."

Here, therefore, notwithſtanding the importance of the ſubject, a minute explanatory detail may not be ſo practically indiſpenſible as even in leſſer matters of extra-ſeſſional buſineſs, where the juſtice of peace may be called to act individually, on the ſpur of the moment, apart from his learned brethren, and experienced officers. It would be a defect, however, in this work, to omit ſo important and extenſive a branch of the duty of this magiſtracy. But it muſt be entered upon with the more caution and diffidence, and will be received with the more indulgence, that the

[a] Eirenarcha, b. iv, proem. [b] Ibid.

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

Scottiſh ſeſſions of the peace have been far from being ſo fortunate as the Engliſh; which are copiouſly, accurately, and minutely, explained, by a ſucceſſion of authors of eſtabliſhed reputation. The authority of books, therefore, cannot, it will readily occur, always be appealed to throughout this explanation; which indeed chiefly reſults from attentively conſidering, and carefully comparing together, the accounts of the practice of their reſpective juriſdictions, obligingly communicated from every quarter, and almoſt every county in Scotland, by the gentlemen who hold the office of clerks of the peace.

The ſeſſions of the peace defined.

THE ſeſſions of the peace, according to the Engliſh lawyers, is "a court of record, holden by two or more juſtices "of the peace, whereof one is of the *quorum*, for the execution of the authority given them by the commiſſion of the peace, and certain ſtatutes and acts of parliament [a]."

Court of record, what is it?

THE Scottiſh ſeſſions of the peace differ conſiderably from the Engliſh, as well in the queſtions as the manner in which they exerciſe juriſdiction. The definition, however, may perhaps be ſafely adopted by us, at leaſt with ſome little explanation. But a difficulty occurs at the very threſhold. A *court of record* is not a native term of Scottiſh law. Our own writers, therefore, have not defined or explained it. Lord Stair, who once uſes the term, ſeems to conſider it as meaning a court, in whoſe books deeds are uſually recorded. "Baron courts (ſays his lordſhip) are not courts of record, "*wherein writs are uſually regiſtered* [b]." If this be the criterion of *courts* of *record*, it ſeems to exclude the ſeſſions of the peace. Writs are not uſually regiſtered in their books. They cannot be regiſtered therein either for perſonal execution, which does not follow upon their decrees in civil mat-

[a] Dalt. c. 185. Burns, tit. Seſſions. [b] B. ii, tit. 3, § 63.

ters [a], nor even for *conſervation* merely; which the ſtatute of king William, 1685, c. 38, diſallows in the caſe of incompetent courts. Some writs, indeed, are ſpecially ordered to be entered on record by the clerk of the juſtices [b]. As, for example, letters of epiſcopal ordination; of which the extract unqueſtionably bears faith. But a *court of record*, according to Sir William Blackſtone, is, "that "where the acts and judicial proceedings are inrolled in "parchment for a perpetual memorial and teſtimony: which "rolls are called the records of the court; and are of ſuch "high and ſupereminent authority that their truth is not "to be called in queſtion. For it is a ſettled rule and "maxim, that nothing ſhall be averred againſt a record; "nor ſhall any plea, or even proof, be admitted to the con-"trary. And if the exiſtence of a record be denied, it "ſhall be tried by nothing but itſelf; that is, upon bare in-"ſpection whether there be any ſuch record or no, elſe "there would be no end of diſputes [c]; whereas the pro-"ceedings in courts not of record, may be tried as to the "truth of their exiſtenee, or having actually been had by a "jury, like other matters of fact, and not by mere inſpec-"tion [d]."

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

EVERY part of this deſcription does not apply to the Scottiſh ſeſſions. There is no *cuſtos rotulorum*. Neither are their acts taken down in *parchment-rolls*. In general, however, their procedure is entered by the clerk in a ſederunt-book, and authenticated by the ſubſcription of the preſiding juſtice. Extracts are given out, either of the laſt interlocutor, or, if it be wiſhed, of the whole procedure. In the ordinary juſtice of peace court, the proof generally is in writing. The proceſſes are all preſerved.

[a] See below, § 10.
[b] See above, cap. 1, § 10.
[c] B. iii, ch. 3, p. 24.
[d] Woodeſon, vol. i, lect. 4, p. 99.

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

"All courts of record," says Blackstone [a], "are the "king's courts, in right of his crown and royal dignity, and "therefore no other court has authority to fine or imprison; "so that the very erection of a new jurisdiction, with "power of fine or imprisonment, makes it instantly a court "of record." And, "on the other hand," adds Mr. Woodeson [b], "inferior courts not of record cannot hold pleas "for trespass, *vi et armis*, because they cannot assess a fine." Carth. 108."

THE decrees of the justices in civil matters are no ground of personal diligence, but of poinding only. But, as criminal judges, they can both fine and imprison. Prosecutions for assault and battery, which seem to correspond to the pleas for trespass, *vi et armis*, are not only competent before them, but form the chief and most appropriate subject of their jurisdiction. In this view also, the description would appear to belong to them.

How many necessary to constitute a sessions.

Two justices, by the express words of the commission of the peace, are sufficient here, as well as in England, to constitute a regular court of sessions of the peace [c]. That part of the description, by which one of them must be of the *quorum*, has been already explained [d].

One of the quorum?

For execution of their general duty.

A COURT of sessions of the peace being thus a court held for the execution of their general duty, it is not constituted by two or more justices meeting for inquiry only, or for the

[a] Woodeson, vol. i, lect. 4, p. 99.

[b] Ibid.

[c] In the case of Fullerton against Hamilton, 1714, No. 19, reported by president Dalrymple, the court of session, proceeding upon the words of the act 1661, found *three* justices necessary to constitute a *quorum*; while, in practice, courts were sometimes held by one justice. Both those errors have been corrected by subsequent decisions. 1730, Dec. Reid against Finlayson. Dict. Decis. tit. Jurisdiction.

[d] See chapter 1, § 7.

diſcharge of any particular ſervice, or to inquire, hear, and determine, of a riot, by virtue of the ſtatute, 13 Henry IV [o].

§ I. THEIR CONSTITUTION AND POWERS IN GENERAL.

THE court of *general quarter-ſeſſions* is deſcribed by lord Bankton [p], as "the quarterly meeting of the juſtices of "peace of a whole county, at the times mentioned in their "commiſſion, authoriſed by the ſtatutes." The ſtatute 1661, cap. 12, ordains the juſtices to meet four times in the year, viz. the firſt Tueſday of March, May, and Auguſt, and the laſt Tueſday of October [q]. While this ſtatute directs the general quarter-ſeſſions to meet on the days above mentioned, it does not annul their meetings if they be held upon ſuch other periods as may better ſuit the conveniency of any particular county. It ſhews, however, the deſire of the legiſlature, that the meetings of the ſeſſions ſhould be regularly held at ſtated and known times; much inconveniency having ariſen from the looſe and irregular practice which formerly obtained in England. In Scotland, the ſeſſions, almoſt univerſally, meet upon the days ſpecified in the act.

Quarter-ſeſſions defined.

Time for the meeting of the quarter-ſeſſion.

Act only directory.

IF a quorum does not meet on the day appointed, the quarter-ſeſſions may be held any other day within that quarter of the year.

If no quorum attends.

THE quarterly meetings are called the *quarter-ſeſſions*, or rather the *general quarter-ſeſſions;* and may adjourn from time to time as may appear neceſſary. The adjourned meetings are termed *general ſeſſions;* or, if they be held for ſome particular piece of buſineſs, *ſpecial ſeſſions*.

General quarter-ſeſſions.

General ſeſſions.

Special ſeſſions.

[o] Lambard, ch. iv, § 1.
[p] Inſt. b. iv, tit. 7, § 4.
[q] Forbes, part ii, p. 6.
By the law of England, the quarter-ſeſſions of the peace are held generally four times in the year, viz. in the firſt week after the feaſt of St. Michael, the firſt week after Epiphany, the firſt week after the cloſe of Eaſter, and the firſt week after the tranſlation of St. Thomas the Martyr. Burns, tit. Seſſions.

§ I. THEIR CONSTITUTION AND POWERS IN GENERAL. Common ſeſſions.

BESIDES the regular diſtrict meetings [q], the juſtices with us have always been in the practice of holding courts at any time, though not by way of adjournment of the quarter-ſeſſions; theſe meetings are called *common* and *intermediate ſeſſions* [r].

Place of meeting of the ſeſſions.

THE court of *general quarter-ſeſſions* is held at the head borough of the ſhire; where, by the common law, all courts muſt be held, which are not ſpecially ordained to meet in ſome other place [s]. This wiſe and ſalutary rule of our common law, avoids thoſe inconveniencies, difficulties, and embarraſſments, which are complained of in England; where, ſometimes, it is ſaid, different juſtices appoint the general quarter-ſeſſions to meet in different places at the ſame time. And what, in ſuch a caſe, is the proper remedy; which of the two is to be conſidered as the legal meeting; whether both are to be held good, or neither; and how the juſtices, "by whoſe forwardneſs," as Dalton expreſſes it, "ſuch di-"viſion happens," are puniſhable; theſe inquiries, which afford ſubject of diſpute and controverſy to the Engliſh lawyers [t], concern not us who are happily utter ſtrangers to the evil.

THE ſeſſions may be held in the head borough, even when it is an incorporation, having juſtices of its own.

Mode of calling the ſeſſions, and who is convener thereof.

THE quarter-ſeſſions are generally called by advertiſement in the newſpapers, or by letters ſent, or other intimation given by the clerk. When a numerous attendance is particularly wiſhed, ſome juſtice of high rank and conſideration is uſually appointed convener; in whoſe name letters are written, requeſting the attendance of the other juſtices [w].

[q] See chap. I.

[r] Erſk. Inſt. b. i, tit. 4, § 15.

[s] Kaimes' Deciſions, v. ii, p. 36.

[t] Dalt. c. 185; Burns, tit. Seſſions.

[w] Accordingly, during the earlier part of the laſt century, when the ordinary routine of the juſtice of peace buſineſs of the county of Edinburgh

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

IT is not lawful to hold courts on feriat or holy days. Lord Bankton obſerves, "we have no other ſtated holy days, "whereof the obſervance is enjoined on account of religion "beſides Sunday.[b]" Formerly inferior courts could not, without a diſpenſation from the court of ſeſſion, ſit during the vacation of that tribunal; that huſbandmen might not be diſtracted from their labour in ſeed-time and harveſt[c]. But "juſtices of peace," Mr. Erſkine obſerves, "whoſe powers "chiefly conſiſt in preſerving good order, may ſit at all times "in matters which concern the public peace; as ſheriffs alſo "do in criminal cauſes[d]." A decree of the ſeſſions, which ſubjected a perſon in damages, for taking rabbits from a warren, *not clandeſtinely*, but *openly*, and by order of a perſon, who claimed the property of the warren, was held to be null, being pronounced during the chriſtmas vacation[e].

At what time is it unlawful for the ſeſſions to meet.

Payment of the juſtices.

THAT the ſeſſions may be attended by every perſon whoſe preſence "may be neceſſary for the furtherance of public "juſtice, or the ſervice of the king, they are," ſays Mr. Lambard[f], "invited thereto by a certaine freedome of ac-

Freedom of acceſs to the ſeſſions.

was done by numerous meetings of the county gentlemen, among whom were generally ſeveral of the judges of the court of ſeſſion, and other law officers, the lord advocate was moſt frequently the convener, and entruſted with the charge of procuring full meetings of the juſtices. Extraordinary meetings were alſo called by him at the direction of the ſecretary of ſtate, to communicate matters to the juſtices. —Sometimes thoſe communications were made by other juſtices of diſtinguiſhed rank; as, for example, earl of Dalhouſie, in 1767, 31ſt March.

[b] B. iv, tit. 42, § 3.

[c] Erſk. b. i, tit. 4, § 35. Bank. b. iv, tit. 42, § 4. Acts of ſederunt, 1696, July 21. 1728, Feb. 29. 1753, Feb. 16. Fount. 1709, Nov. 12, Lees and Parlone.

[d] Ibid.

[e] The lords found, "that there be-"ing no violence libelled, the juſtices "of peace could not have judged in "the *chriſtmas* vacance; but found "that this and the former errors "could only infer nullities in the de-"creet, but not damages againſt the "juſtices." 19th November 1714; Fullerton and his tenants againſt Hamilton. Dalrymple. No. 115. Mr. Erſkine, without remark, quotes this deciſion, which would require further explanation.

[f] Eirenarcha, b. iv, c. 3.

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

" ceſſe, and by protection from common arreſt: a thing " that is *incident to each court of record; and without the* " *which juſtice ſhould be greatly hindered;* ſo that if a man " come voluntarily to theſe ſeſſions, either to preferre a " bill of indictment, or to give information againſt another, " or to tender a fine upon an inditement touching him- " ſelf, or doe come compelled to make appearance for the " ſaving of his bond" (or ſaving his recogniſance, as Burns expreſſes it), " and be arreſted by the ſheriff upon common " and original proceſs, in his coming thither, or during his " tarrying there; it ſeemeth that, upon examination of the " matter, under his oath, he ſhall be diſmiſſed" (diſcharged) " thereof by the priviledge of this court, even as it is uſed " in the higher courts at Weſtminſter. But," obſerves Dr. Burn [a], " Mr. Hawkins puts it more doubtfully, ſay- " ing it is queſtioned, whether the ſeſſions, as alſo all " courts of record, may not diſcharge any perſon arreſted " during his journeying to or from ſuch courts, or neceſſary " attendance there, by proceſs from any other court. How- " ever, it ſeems to be agreed, that any ſuch court may diſ- " charge a perſon who ſhall be ſo arreſted in the face of it. " 2. Hawk. 5." Dr. Burn further adds, " it ſeemeth to " have been agreed in the argument upon colonel Pitt's " caſe (which was an arreſt in his return from parliament), " that not only in the high court of parliament, but alſo in " the inferior courts, the parties to the ſuit, and alſo the " witneſſes, are protected in going, continuing, and return- " ing. And this returning hath never been very nicely " ſcanned, ſo as to require a man to go the direct road; and " the protection is not forfeited, by the plea of going out of " the way; becauſe it may be the party went to buy a " horſe, victuals, or other neceſſaries, for his journey. Nei- " ther is the law ſo ſtrict in point of time, as to require a " perſon to ſet out immediately after the trial is over; and

[a] Tit. Seſſions.

" for that was citted the caſe of Hatch and Bleſſet. T. 13. An[a]. But where a man is arreſted by proceſs, out of " the courts at Weſtminſter," Dr. Burn obſerves, that " it doth not ſeem that the juſtices of the peace (unleſs the " arreſt is made in the ſeſſions) have power to diſcharge " him; but, on application to the court, from whence the " proceſs iſſued, ſuch court probably may diſcharge him, " and puniſh the perſon who made the arreſt."

§ 1. THE CONSTITUTION AND POWERS IN GENERAL.

In the paſſage juſt now quoted (and which Dr. Burn adopts without alteration), Lambard conſiders this privilege as " a " thing incident to each court of record;" and ſir William Blackſtone[b] lays down, in the ſame general terms, that " ſuitors, " witneſſes, and other perſons, neceſſarily attending any *court* " *of record* upon buſineſs, are not to be arreſted during their " actual attendance, which includes their neceſſary coming " and returning." Upon this, ſir William's learned ſucceſſor in the chair at Oxford, remarks, " this latter point," (the power of courts of records to protect and diſcharge ſuitors and witneſſes from arreſts) " ſir William Blackſtone, " without citing any authority, lays down very generally. It " is, " I believe the received doctrine, and is at leaſt very " ſtrongly countenanced by the caſe of Clerk *v.* Molyneux, " as reported (1 Lev. 159). The ſame caſe is to be met " with, I. Keb. 845, 1 ſed. 269. The diſtinction which " Keble attributes to the chief juſtice, that a court might " puniſh the contempt in arreſting, and yet not diſcharge " the party arreſted, is abſurdly inconſiſtent[c]." And the

[a] In this caſe the perſon had a trial at Wincheſter aſſizes, which was over on Friday at four in the afternoon; ſhe ſtaid there till after dinner on Saturday; and in the evening at ſeven was arreſted going home to Portſmouth, which is 20 miles; and the court held that ſhe ought to be diſcharged, her protection not being expired, and a little deviation of loitering would not alter it. Str. 987.

[b] B. iii, ch. 19, p. 289.

[c] Woodeſon, Vinerian Lectures, Lect. iv. vol. i, p. 98.

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

learned annotator on the Commentaries, remarks, upon the ſame paſſage of Blackſtone, " The court of common pleas " have laid down this general rule, viz. that all perſons " who have relation to a ſuit which calls for their attend" ance, whether they are compelled to attend by proceſs or " not, are entitled to privilege *eundo et redeundo*; provided " they come *bona fide*. A perſon therefore attending the " court, to juſtify himſelf as a common bail, is privileged " 1 H. Bl. 636. Barriſters arreſted upon the circuit, have " frequently been diſcharged by the judges. Ibid. The " court of king's bench have refuſed to diſcharge a credi" tor of a bankrupt, arreſted whilſt attending the commiſ" ſioners, to prove his debt; but, probably, he would have " been diſcharged by the chancellor, from whom the com" miſſioners of bankrupt immediately derive their authori" ty. 1 T. R. 377. Where a cauſe is referred by a rule of " court, the party is protected from arreſt whilſt attending " the arbitrator. 3 Anſt. 941 [d]."

OUR law affords few authorities or caſes upon this matter. If it be, as Lambard ſays, a thing incident to each court, without which juſtice would be greatly hindered, it ſhould belong to the Scottiſh ſeſſions alſo, who yet appear not to have ever exerciſed it. It is ſaid, that ſome years ago a caſe occurred which brought this matter under the cogniſance of the court of ſeſſion; and that this opinion, viz. that it was a power neceſſarily inherent in all courts, was ſupported by the late lord juſtice-clerk Macqueen; while others of the judges rather inclined to view it as an extraordinary interpoſition, peculiar to the ſupreme tribunal. But no ſuch caſe appears in the books; nor can any thing certainly be learned concerning it.

[d] Black. Comm. with notes and additions, by Edward Chriſtian, Eſq. barriſter at law, and profeſſor of the laws of England in the Univerſity of Cambridge, v. iii, p. 289, note 4.

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

IN a court held at Edinburgh, under the ſmall debt act, one of the parties having offered the evidence of a priſoner in the Canongate jail, on application by the court to the magiſtrates, he was ſent up from priſon, accompanied by an officer; and, after giving his evidence, was remanded back in the ſame manner. Had it been the caſe of one confined for debt, at the inſtance of any private perſon, and ſuppoſing him to have contrived to eſcape by the way, it is not perhaps very clear how far the interference of the court would have ſcreened the magiſtrates from payment of the debt, even independently of any proof of actual blame or negligence in the mode of eſcorting him.

LORD Fountainhall mentions the caſe of one who was cited into court, to give up, by the Porteous-roll [e], criminal

[e] Porteous roll (portuis) is derived from the Latin verb *portare*, to carry (in French *portes vous*). It was the catalogue, or roll of names, to be tried at the juſtice ayres *(itinera juſtitiæ)*, or circuit courts of juſticiary; as *traiſtis* was the roll containing the more parcicular ſtatement of the offences of the different malefactors. The traiſtis, according to ſir John Skene, was ſo called, becauſe it was committed "to the traiſt, faith, and "credit, of the clerks and crowner; "quha, gif they be truſtie and faith-"ful, ſuld nought reveale, deleete, "change, or alter the ſamin." *De verborum ſignificatione, v. Traiſtis Porteous.*

Dittay was the old word for indictment. The ancient court of juſticiary was entirely itinerant, holding juſtice ayres, or circuit courts, over the whole kingdom. At Edinburgh, one was held ſo late as the reign of James VII. When a juſtice ayre was to be held at any particular place, the old practice was for the juſticiar to iſſue a brieve of dittay to the ſheriff and his deputes, directing him to ſummon to the head burgh, or other certain place, of each barony, twelve or fifteen ſufficient men *(ad hoc opus magis ſufficientes)*, of each tenantry or village (tenendria ſeu villa), four or ſix men; of each burgh twelve or ſixteen burgeſſes, according to the reſpective population of the places *(quantitatem locorum et numerum perſonarum in eiſdem exiſten)*; together with the *miller, brewer, ſmith, and officer* of court of each barony; "becauſe," ſays ſir George Mackenzie, "it was preſum-"ed that the beſt intelligence was "to be had from ſuch public per-"ſons." The purpoſe of ſummoning them was to the taking up of dittay *(ad ſurſum reddendum indictamenta*

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

dittays (to give information reſpecting criminals in order to their trial at the circuit court of juſticiary), and is taken with caption. He gives in a bill for ſetting him at liberty; upon this reaſon, that the judges gave a protection to all who came in for giving up dittays, and ſo he could not be taken. "The lords inclined to ſet him at liberty, and to ſuſtain the "privilege and exemption, (being as favourable as a public "fair is) though it was founded upon law, in regard the "juſtices declared and atteſted it was their cuſtom and "practice to grant ſuch protections. Our brocard," (maxim) adds his lordſhip, "runs in the contrary to this, viz. that no-"thing can take away ſignet letters, ſuch as caption is; but "ſignet letters, viz. a ſuſpenſion, *eodem modo unumquodq.* "*diſſolvitur* [a]," &c.

THE moſt frequent occaſion of the ſupreme court exerciſing this power, is in the caſe of the ſanctuary of Holyroodhouſe; from whence perſons, whoſe preſence is ne-

regia); that is, to give information of the offenders within their reſpective bounds. Theſe informations were returned into the court of juſticiary; and from them was made up the roll of names for trial, called the Porteous roll.

The ſtatute 8 Annæ, c. 16, § 3, aboliſhed the ancient method of taking up dittay by the ſtreſs and Porteous roll; and § 4 ordains informations, in order to making up of dittays concerning crimes, to be tried in the circuits by preſentments, to be made by the juſtices of their quarter-ſeſſions; or upon informations, to be taken by the ſheriffs, ſtewarts, bailies of regalities, and their deputies, magiſtrates of boroughs, other inferior judges and magiſtrates, who are ordained to hold courts upon the 22d of February and 22d of July, yearly, for the purpoſe of receiving information of crimes to be tried at the enſuing circuit; and, at leaſt 40 days before the holding of the court, to tranſmit to the lord juſtice-clerk and his deputies, accounts, ſubſcribed by them, of the names of the offenders, the facts committed, with the time, place, and other circumſtances, that may ſerve to diſcover the truth; as alſo, the witneſſes names, and titles of ſuch writs as are to be made uſe of at the trial. In practice, Mr. Hume obſerves, this piece of duty has ordinarily been allowed to fall into the hands of the ſheriff, whoſe office, ſince it was new modelled in 1748, affords more ſecurity than of old, for his ſkill and diligence in ſuch matters. Hume's Crim. Law, v. iii, p. 31.

[a] 1679, Nov. 13.

ceſſary, either on their own account, or in the cauſes of others, are, at the diſcretion of the judges, brought to court under the cuſtody of one of the macers (officers of court), and afterwards reconveyed to the ſanctuary; being protected, in the meanwhile, from *perſonal diligence* [f]. § 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

THE Engliſh lawyers ſtate various caſes of difficulty from the court ſometimes happening to be divided [g]; in which caſes the expedient recommended ſeems to be, to delay the matter till a full meeting of the juſtices be called; or, if they ſhould ſtill be equally divided, to ſubmit, or refer the matter, with the conſent of parties, to a higher tribunal. But it ſeems to be underſtood in England, that, without the conſent of parties, they cannot refer any point to the *deciſion* of another tribunal, but only to *examine* and *report* [h]. If the ſeſſions divide. Can they refer?

[f] From being arreſted. See more on this ſubject, and ſome late caſes, under Warrants meditatione fugæ.

[g] An example of this is the following caſe, ſtated by Dr. Burn (tit. Seſſions), from the books of reports (2 ſeſſ. 193, t. 8, G. II, k.) and the juſtices of Weſtmoreland, of "an order of two juſtices of the "borough for removing a poor fami-"ly: appeal to the ſeſſions of the "county, at which the juſtices were "equally divided; ſo no deter-"mination was made, nor the ap-"peal adjourned. A mandamus (or "order) was directed to all the juſ-"tices of the county in general, to "proceed on the appeal. And it "was ſaid that the juſtiees ought in "this caſe to have adjourned the "appeal, or continued it over to a "ſubſequent ſeſſions, till, by the "coming of more juſtices, it might "have been determined. Or," adds Dr. Burn (ibid.), "if the court ſhall "be ſtill divided, as may happen in "ſmall counties, or towns corporate, "where the juſtices are but few, or "where the number is reduced by "reaſon of the reſt being intereſted, "in order that the cauſe may not be "hung up for ever, it may be ad-"viſeable for the court, by conſent "of the parties, to affirm or quaſh; "and thereupon ſtate the caſe ſpe-"cially, to be laid before the judges "of aſſize, or before the court of "king's bench."

[h] In the caſe of K. and Harding, 2 Salk. 477, it was delivered as the reſolution of the court (of king's bench), a judge of *niſi prius*, by conſent of parties, "may make a rule to "refer a cauſe; but the ſeſſions can-"not do ſo though by conſent. They "may refer a thing to another to "examine, and report for their de-"termination, but cannot refer a

§ 1. THEIR CONSTITUTION AND POWERS IN GENERAL.

IN this country the ſeſſions of the peace ſometimes refer matters which they cannot conveniently overtake themſelves, to a committee of their number, to examine, take evidence, and report. This frequently happens; for example, in the caſe of appeals to the quarter-ſeſſions, which will come under our view afterwards.

Muſt they take the proof themſelves by commiſſion.

Juſtices not puniſhable for what done in ſeſſions.

THE perſons entitled to act as procurators before the ſeſſions, have been already mentioned [i].

By whom the quarter-ſeſſions are attended.

THE ſeſſions are attended by the juſtices and clerk of the peace, procurator-fiſcal, bar-conſtable, and other officers. By our two general ſtatutes [k], at leaſt one conſtable muſt attend from every pariſh, inſtructed with a commiſſion to anſwer for the others. By the law of England, the quarter-ſeſſion muſt be attended by the jailor, that he may produce his priſoners, and receive ſuch as are to be committed; and by the keeper of the houſe of correction, to give an account of the perſons in his cuſtody. The ſame deſcription of perſons ought, for the ſame reaſon, to attend the Scottiſh quarter-ſeſſions; and all thoſe who are bound over to anſwer, or to proſecute, and give evidence [l].

" thing to be determined by the " other. But in the caſe K. and " the juſtices of Northampton, t. 17, " G. III, on a motion to quaſh an " order of ſeſſion, quaſhing a poor " rate," (that is altering what had been done, and ſtriking the pauper off the liſt), " on the ground that " the rate was by the ſeſſions refer- " red to two juſtices out of the ſeſ- " ſions; and that the ſeſſions after- " wards adopted their opinion with- " out exerciſing their own judge- " ment. Lord Mansfield ſaid, if they " did this of their own accord, with- " out the conſent of the parties, it is " bad: but if they did it by conſent " of the parties, they have done very " right; and we will never ſuffer " the party, who conſented to the " reference, to come here to ſet it " aſide; and I think it ſufficient if " the attorneys conſented, and at- " tended at the reference. And the " cauſe was ſent back to the ſeſ- " ſions, to certify whether it was re- " ferred by conſent." Cal. Caſ. 30. Burn, tit. Seſſions.

[i] See chap. 1, § 15.

[k] 1617, and 1661.

[l] Forbes, Juſtice, part ii, c. i, § 19.

§ 2. ORDER OF BUSINESS.

II. THE uniform practice in England is to read, after the proclamation of the ſeſſions, the commiſſion, and ſome ſtatutes of peculiar importance [l]. This regular courſe never was followed in this country. It has not been uſual to read any of the ſtatutes at the quarter-ſeſſions. The new commiſſion is always read at the firſt meeting of the ſeſſions after its arrival in the county.

THE meeting being conſtituted, take up whatever buſineſs, whether public or private, is competently brought before them; firſt, public matters, as thoſe relative to the police of the country; ſuch as, bridges, road-money, &c. They receive reports from committees or diſtrict meetings; an account of fines collected by them, &c. &c.

IN ſome counties it is cuſtomary to commence the quarter-ſeſſions by reading over the intermediate ſederunt-books of the different diſtrict meetings. The ſeſſions of different counties have frequently communications with one another, touching matters which require their joint co-operation; as, for example, the maintenance of the poor [m], repreſſing vagabonds, and adjuſting weights and meaſures. The uſual form is, by forwarding to the clerks extracts of the reſolu-

Weights and meaſures to the proper ſtandard.

[l] The king's proclamation againſt profaneneſs and immorality is alſo to be read; and, likeways, there are divers acts of parliament required to be read in the ſeſſions; as the 5 El. c. 1, againſt popery; and the riot act, 1 G. c. 5: and the black act, 9 G. c. 22; and the 11 and 12 W. c. 15, about ale meaſures: 30 G. II, c. 3, about burying in woollen, are required to be given in charge at the ſeſſions. And the 4 and 5 W. c. 24; 7 and 8 W. c. 32; 3 and 4 An. c. 18; and 3 G. II, c. 25, concerning jurors, are to be read in midſummer ſeſſions yearly. And the 2 G. II, c. 24, againſt bribery and corruption, in election of members of parliament, is to be read at every Eaſter ſeſſions.

[m] Upon this matter much correſpondence took place betwixt the quarter-ſeſſions of the counties of Lanark, Linlithgow, Ediuburgh, and Hadington, about the beginning of laſt century. Overtures were preſented from the juſtices of Lanark; and committees, appointed by the quarter-ſeſſions of the county of Edinburgh to converſe with the Lanark juſtices thereon.

§ 2. ORDER OF BUSINESS.

tions of the reſpective ſeſſions, and by appointing committees to correſpond or meet together.

THE quarter-ſeſſions have been occaſionally applied to by the preſbyteries, or ſynods, of their bounds, to adopt joint meaſures for repreſſing immorality and profaneneſs [n]. The

[n] Thus, for example, in the year 1742, the reverend preſbytery of Edinburgh correſponded with the ſeſſions of the peace, touching the beſt method to check the corruption of manners, at that time remarkable; which they ſeem reſpectively to have laid the blame of upon each other's neglect. The preſbytery communicated a repreſentation, requeſting the ſaid juſtices would take into their ſerious conſideration the ſeveral acts of parliament, and his majeſty's proclamation, againſt ſwearing and curſing, and exceſſive drinking, and other profaneneſs and irregularities; and take effectual methods for putting the laws in execution; and that they would appoint a court weekly, to be held for that purpoſe! This not having been immediately noticed by the ſeſſions, was followed with another repreſentation, ſubſcribed by the moderator Mr. Guſtart, and perſonally preſented by three of the miniſters of the city; recapitulating the former, and "alſo humbly deſiring the juſtices might reſtrain the "acting of plays, under whatſoever "pretence, whether of concert or "otherways, whereby the acts of parliament againſt them may be elided, to the great prejudice and hindrance of youth in their education; "and, for the reaſons therein mentioned, craving the juſtices might, "in their great wiſdom, take the "moſt proper and effectual methods "to prevent it." The juſtices, in their anſwer, profeſſed themſelves highly ſenſible how much "profaneneſs, vice, and immorality, do "abound, and are openly practiſed, "notwithſtanding the many good "and wholeſome laws made againſt "the ſame," &c. "and do declare "that they are ready on all occaſions to give proper countenance "and encouragement to ſuch endeavours as may be uſed for the "proper execution of thoſe laws "and ſuppreſſion of vice and immorality; and that they will be ready "at any time, and in any court held "by them, to receive proper complaints againſt offenders, and to "give the ſame all due diſpatch; "and to apply the penalties enacted "by the foreſaid ſtatutes againſt offenders in the moſt proper and effectual manner." But they ſeem to have thought the preſbytery themſelves to deſerve reproof: for they ſay, "*they cannot but obſerve that the* "*reading and publiſhing the laws and* "*proclamations againſt immorality from* "*the pulpit, in the manner by them ap-*"*pointed, hath been for many years en-*"*tirely neglected; they therefore recom-*"*mend* to the miniſters within the "county, to conſider how far the "reading thoſe laws, or proclama-

ſeſſions have alſo occaſion ſometimes to apply for advice to the courts of law, with whom the communication is conducted in the ſame manner. § 2. ORDER OF BUSINESS.

THE private buſineſs of the quarter-ſeſſions chiefly conſiſts in appeals from the common or diſtrict meetings, which, as well as the cauſes in the ordinary ſeſſions, are taken up according to a roll kept by the clerk.

III. CAUSES are brought into court at the inſtance, either of the private party or of the procurator-fiſcal (public proſecutor), or of the private party, with the concurrence of the procurator-fiſcal, or at their joint inſtance. § 3. PROSECUTORS.

EVEN the material intereſt of each member of the body politic, to prevent wrong from being committed with impunity, has not introduced into this country the principle of the Roman law, by which criminal actions were *popular* [o]. As they only can bring a civil action to whom the debt is owing, ſo none are permitted to bring a criminal proſecution but the injured perſon; to whom the court will award reparation, beſides puniſhing the offender. But every concluſion for puniſhment ought regularly to be with concurrence of the procurator-fiſcal. Private proſecutor.

ACCORDINGLY, in thoſe revenue matters, where any per- Special intereſt.

" tions, from the pulpit, and enfor- " cing the juſtice of them, and the " practice of morality, may be pro- " per for preventing the growth and " practice of the immoralities ſo " much abounding, and ſo juſtly com- " plained of." And anſwer, with re- " ſpect to the plays, they do not find " that the animadverting upon them " doth properly belong to the juſ- " tices, but that the execution of " the laws thereanent doth belong " to other powers." Neither appears to have taken the ſteps ſuggeſted by the other. The juſtices appointed no weekly meeting for that purpoſe ſpecially. The clergy were not more regular than formerly in the particular mentioned by the juſtices.

[o] Popular actions, in the civil and Scottiſh law, mean thoſe in which any perſon capable of ſuing, *quilibit ex populo*, may proſecute.

§ 3. PROSECUTORS.

ſon may proſecute, the legiſlature gives the private informer or proſecutor a *ſpecial* intereſt, by making part of the penalty payable to him [o].

Who may purſue, and whocannot.

EVERY individual *ſui juris*, and not fugitated (outlawed), and thus put out of the protection of the law, may proſecute for an injury done to himſelf.

Outlaws? Excommunicated? Infamous?

A PERSON therefore can proſecute, although he be under a ſentence of excommunication; the once "dreadful [p]" weapon of eccleſiaſtical juriſdiction [q]; or though inadmiſſible as a witneſs on account of legal infamy.

IF the principal purſuer be a married woman, the action, whether civil or criminal, cannot proceed without the con-

[o] By ſpecial ſtatute indeed, 1612, cap. 4, the relations, in the caſe of one crime, that of rape (not competent to be tried before the juſtices), may purſue to the effect of an arbitrary puniſhment, without the concurrence of the perſon principally injured.

[p] 16 61, c. 5.

[q] This, however, is the happy improvement of modern times. Even the Reformation was ſo far from taking the civil ſting from excommunication, that by the act James VI, 1609, c. 3, excommunicated perſons were not to be ſuffered, either directly in their own perſons, or covertly and indirectly by others in their names, and for their behoof to enjoy the poſſeſſion of their lands, rents, and revenues, which were to be uplifted for his majeſty's uſe; and, as ſir George Mackenzie tells us, (Obſervation on the Statutes, p. 328) they were "not ſo much as "*bona fide* poſſeſſors; but, in virtue "of this act (1609, c. 3), are obli"ged to refund all their own by"gone rents poſſeſſed by them be"fore citation." And by different acts of parliament, in the reign of James VI (1572, c. 53), and Charles (1661, c. 25; 1663, c. 23), excommunicated perſons were to be denounced rebels, and put to the horn. But, in the firſt parliament of William and Mary, thoſe acts "enjoyn"ing civil pains upon ſentences of "excommunication," were reſcinded, "as being now either uſeleſs, or "found to be hurtful." 1690, c. 28, and this improvement of our law was completed by the Britiſh ſtatute (10 Ann, chap. 7, ſection 10) prohibiting civil magiſtrates to compel any perſons to appear in a proceſs of excommunication, or to give obedience to ſuch ſentence when pro-

currence of the huſband; if ſhe be defender, it muſt conclude againſt him alſo: if the party be under age, it muſt be brought in name of his tutor, guardian, or other perſon, who has the charge of him. But, as even a minor engaged in buſineſs may validly bind himſelf, ſo minors, if in ſervice, may purſue for their wages in their own names without the concurrence of any body. § 3. PROSECUTORS. Minor in ſervice.

THE perſon ſpecially intereſted being the only one who is entitled to proſecute, it ſeems to follow that others, who are not perſonally intereſted, cannot even concur in the proſecution along with him; which, regularly, muſt be either ſolely at the inſtance of the injured party for his own intereſt, or with the *concourſe*[r], or at the *inſtance*[s] of, the procurator-fiſcal, for that of the public.

How far therefore thoſe aſſociations are legal, which are entered into for the preſervation of the game, and puniſhment of poachers, as they are termed, or even for the important purpoſe of proſecuting thieves; or any other in itſelf equally lawful and meritorious, has appeared queſtionable. No action has yet been ſuſtained in the name of the preſident, ſecretary, or committee, of any ſuch aſſociation.

nounced, as well as declaring that no civil forfeiture, or diſability, ſhould be incurred by reaſon of any excommunication.

But, in our neighbouring country, it would appear that the law ſtill lends a ſupporting hand to this exerciſe of eccleſiaſtical juriſdiction.—Excommunicated perſons cannot be witneſſes in any court; and, which (ſays Blackſtone) is the *worſt of all*, cannot bring an action, either perſonal or real. [Nor is this the whole: for if, within 40 days after ſentence, the offender does not ſubmit, the ſheriff ſhall impriſon him in the county jail till he be reconciled to the church. (Black. Com. v. iii, c. 7, p. 101.) See below, § 1. This part of the Engliſh law is regretted by Dr. Chriſtian, who propoſes its correction by the interference of the legiſlature.

[r] *Concourſe* is the technical term for the lord advocate and procurator-fiſcal's concurrence in the criminal proſecution brought by the private party.

[s] *Inſtance* is the term when the fiſcal or lord advocate are the principal purſuers.

§ 3. PROSECUTORS.

Aſſociations, by private authority, are not a ſafe way of attaining what is right. Would counter aſſociations, for protecting againſt cruel, intemperate, and vindictive, proſecution upon the game-laws, be tolerated? At all events, if the aſſociation defrays the expence, yet the proſecution ought to be brought in the name either of the injured individual or of the procurator-fiſcal [q].

Different purſuers cannot include their ſeveral concluſions in one ſummons.

IF there be more than one purſuer, having each a ſeparate ground of complaint, and a ſeparate concluſion, they cannot inſert them in the ſame ſummons or libel. Neither practice nor principle ſupport any ſuch form. Each purſuer muſt conclude for what he deſires in his own ſeparate libel. For example, ſervants to whom a maſter may be owing money, cannot, all of them, inſert their reſpective claims in the ſame ſummons.

STILL more is this the caſe in matters ſtrictly criminal: as, for example, in caſe of an aſſault, or riot, each perſon muſt bring a ſeparate libel and complaint for his own damage. All who may have been injured cannot unite their ſeveral complaints and concluſions. Nay, farther, even the concourſe of the procurator-fiſcal creates no ſuch connection between the complaints as to make it regular to contain them in the ſame paper. But this does not hold, if the fiſcal gives his inſtance, whether as ſole proſecutor, or along with the private party.

More than one defender.

BUT the ſame purſuer may include more than one de-

[q] In a late proſecution, at the inſtance of certain gentlemen aſſociated for preſervation of the game, although no objection had been made by the other party, doubts were entertained by the bench of the legality of ſuch aſſociations; and ſome of their lordſhips obſerved that they had never allowed their own names to go into any ſuch aſſociations. The bill was paſſed, but the matter never followed out; ſo that neither this nor the other points of the cauſe were ever decided. Stewart of Allanton and others againſt George Liddel, 1802, June.

fender in the ſame libel or complaint [r]. The ſame reaſon indeed does not obtain. The defender ſuſtains no prejudice from the circumſtance.

§ 3. PROSECUTORS. More than one defender.

IF a ſervant therefore has money owing him, by more than one maſter, he may include all of them in the ſame ſummons. In like manner, John, James, and George, may be called in the ſame libel for their reſpective acts of guilt in the ſame riotous aſſembly [s].

BUT if it appear that the proſecutor has brought ſo many parties to the bar, with the unjuſt purpoſe of depriving them of the evidence of each other, the court may ſeparate their trials, and begin with the trial of thoſe perſons firſt who are meant to be examined as witneſſes for the others [t].

If the evidence of the one defender be neceſſary to the other?

[r] By the regulations 1695, concerning the court of ſeſſion, ſummonſes againſt debtors are not allowed to be called againſt more than ſix defenders; but that is only to avoid confuſion.

[s] Hume, Crim. Law, vol. iii, c. 7.

As the ſame principle is applicable to all courts, it may be proper to mention a caſe or two, where ſuch relief was given by the court of juſticiary. The firſt is, the caſe of M'Nicol, M'Culloch, and others, who were tried in July 1744. This was a proſecution for aſſault and battery. Seven perſons had been together in a private apartment drinking. One of them was proſecutor; four of them were pannels; and the other two, who were cited as witneſſes againſt them, were the proſecutor's near connections. In this ſituation the pannels moved that one of their number, called Maccandliſh, who, according to the ſtory told in the libel, had the leaſt concern in the affray, ſhould be tried in the firſt place by himſelf, that they might have the benefit of his teſtimony in caſe of his acquital. This was reaſonable; and was accordingly ordered by the court. M'Candliſh, in conſequence, was tried and acquitted; and he having afterwards borne teſtimony for the other pannels on their trial, they too were acquitted.

Another caſe, in ſome meaſure of the ſame complexion, came before the court in June 1748; that of Dr. Stirling, Scott of Horſlie, the honourable Charles Elphinſtone, and others. Two companies, of oppoſite political attachments, Whigs and Jacobites, had been drinking in the adjoining rooms of a tavern at Stirling; and having irritated each other with

§ 3. PROSECUTORS.

THE purſuer of a criminal action muſt find caution to inſiſt and give his oath of *calumny*; that is, ſwear to his belief of the action being well founded.

Transference of actions *to* the repreſentative.

AFTER the death of the purſuer, the action does not fall, but is *transferred*, to his repreſentatives. His executors ſucceed to his right of action, along with other perſonal rights; even where it has a connection with landed property; for example, to actions of damages from treſpaſſing on incloſures; thoſe damages being conſidered as money, which ought to have been in the pocket of the deceaſed himſelf at his death. The right, therefore, goes to his executor, who in that caſe would have been benefited; not to his heir, although the latter may ſucceed to the property itſelf.

What actions may be taken up by the executor.

THIS right of ſucceſſion is unqueſtionable in all actions; which, had they been brought by the predeceſſor, would have concluded only for ſome pecuniary or civil conſequence. Thus, the ſervant's executor ſucceeds to the ſame claim for wages that would have been competent to the ſervant himſelf, if alive. It ſometimes alſo obtains, with reſpect to the patrimonial conſequence at leaſt, even when the ground of action partakes ſomewhat of a criminal nature. The repreſentative may ſue for the recovery of ſtolen goods. He may recover *quod abeſt patrimonio.*

their toaſts and ſongs, which were heard through the partition wall, they at laſt mingled, and came to blows. Afterwards, in vindication of their own honour, each party inſiſted in the court of juſticiary againſt all the members of the other party, as for an aſſault and riot. In the courſe of the proceſs, each ſet of pannels moved alſo the court for the trial, in the firſt place, of certain of their own number, whoſe evidence was ſaid to be material to their friends. And the court ſeeming diſpoſed to comply with this requeſt, the proſecutors on both ſides agreed to deſert the diet, as to certain of thoſe whom they had libelled. But, before going to proof, both parties diſcovered the propriety of deſerting their libels *in toto*. Hume, Crim. Law, vol. iii, cap. 7, p. 288, 289.

§ 3. PROSECUTORS.

May the repreſentative purſue for a *ſolatium*, fine, or other puniſhment?

BUT it may be more doubtful, whether ſuch actions can be competently brought by the executor or relations, whereof the ſhape, as well as the ground, is ſtrictly criminal. If an aſſault, for example, has been committed, is it, after the death of the injured party, competent to his executor, or neareſt of kin, to bring, with the fiſcal's concurrence, an action, concluding, not only for damages, but alſo for a ſum of money *in ſolatium*, for fine, impriſonment, or other puniſhment? In one caſe, which does not fall under the cognizance of the ſeſſions of the peace, viz. murder, the neareſt relations, or if they do not move, then thoſe more diſtantly connected with the deceaſed, may bring a criminal proſecution before the court of juſticiary, concluding for the puniſhment of the murderer, with the higheſt pains of law. If the execution of the ſentence be prevented by a royal pardon, or if the crime be found to amount to culpable homicide only, then they have an action of aſſythment [q], either before that court, or the court of ſeſſion [r].

BUT in the caſe of thoſe injuries, which the ſufferer ſurvives, ſuch as an aſſault, or other leſſer wrong, cogniſable by the ſeſſions of the peace, Mr. Hume ſeems to think it doubtful whether any criminal proſecution be competent to the relations after the death of the ſufferer; "becauſe the "pain and diſtreſs of that injury were ſuffered by the de"ceaſed himſelf, and the law does not hold his kindred to "be ſo deeply affected with the wrong on ſuch occaſions [s]." If the deceaſed had himſelf raiſed the proſecution, and brought it the length of *litis conteſtation* (when parties judi-

[q] An aſſythment is deſcribed by Balfour, to be "money paid to the "kindred, in contentatioun of the "hurt, dammage, and ſkaith, ſuſte"in be theme threw the wanting "of the perſon that is ſlane, and for "pacifying of their rancour." Prac. tit. Cauſſis Crim. p. 517.

[r] Balfour's Practics, p. 517. Hume, Criminal Law vol. iii, c. 5, p. 197.

[s] Ibid. p. 194.

§ 3. PROSECUTORS. Litis conteſtation.

cially join iſſue upon the matter [a]), his death, it is clear, would not prevent the judge from pronouncing ſentence. Neither, were the proſecution likely to be found groundleſs, could the death of the purſuer prevent the defender from obtaining, not only a decree of *abſolvitor*, but reparation of his expences from the party's repreſentatives; who, of courſe, on the contrary ſuppoſition, muſt have the ſame right of inſiſting in the action.

Civil law. Penal actions.

IN the civil law, the general rule is, that even without litis conteſtation all *penal* actions deſcend to repreſentatives. Penal actions are thoſe by which the purſuer obtains more than his true intereſt [b]. But there are exceptions. Thus, actions having principally in view, not the redreſſing of any patrimonial damage, but ſatisfaction for ſome affront, or other injury, to the feelings [c], did not paſs to the heir without litis conteſtation; the ſufferer, who died without bringing the action, being underſtood to have either not felt, or to have overlooked, the injury. That the above rule is rejected or altered in our practice, does not appear from any deciſions or authorities; which indeed generally regard the oppoſite caſe of the tranſmiſſion of actions againſt repreſentatives. This will come under our view in § 6, which treats of defenders.

Unlawful kindred.

THIS right, ſuch as it is, belongs only to legitimate relationſhip: at leaſt ſo it has been decided in the caſe of an action of aſſythment. There was found to be no proceſs at the inſtance of a baſtard couſin-german [d]; and Mr. Hume ſeems to think that this higheſt privilege of blood ought

[a] See it explained, Erſk. book iv, tit. 1, § 69.

[b] Stair, b. iv, tit. 3, § 37. *In quibus ad pœnam privatis applicandam agitur.* Voet. *ad Pand.* Lib. 44, tit. 7, § 11.

[c] *Actio injuriarum et ſi qua alia ſimilis eſt.* Inſt. lib. iv, tit. 12, § 1. *Quod in ea non principaliter de damno farciendo ſed de contumelia vindicanda agitur.* Vinnius *ad loc.*

[d] 27th June 1621, Thomas Weir and M'Naught for rape and murder.

not to be admitted, even in the neareſt degrees of unlawful kindred [a]. At the ſame time it has never been yet decided, whether a baſtard, in the neareſt degree, a ſon, for example, would not be entitled to maintain an action of aſſythment againſt the murderer of his mother. § 3. PROSECUTORS.

IV. WHEREVER the ground of action relates to a private individual alone, and affords no concluſion but for ſome civil or pecuniary conſequence, neither the inſtance, nor concourſe of the public proſecutor, is neceſſary. But actions, more ſtrictly criminal, petty riots, thefts, offences againſt any penal ſtatute, &c. &c.; or, in ſhort, all thoſe which involve pains and penalties againſt the offender, as well as damages to the ſufferer, ought to be brought, either at the inſtance, or with concourſe of the fiſcal. The public is intereſted in the fine which is levied by the public officer, and applied to public uſes. And the ſovereign is directly intereſted in the puniſhment of (as in the eye of law he *principally* is injured by) every ſuch offence, which indeed, is technically deſcribed, and principally puniſhable, as a violation of the king's peace. § 4. INSTANCE OR CONCOURSE OF THE PROCURATOR-FISCAL in matters of pecuniary conſequence and private right. Riots, &c.

BUT this neceſſity of obtaining the concourſe of the fiſcal is intended, not to quaſh and diſcourage, but to facilitate and forward, due inquiry into any wrong which has been committed. Although the public proſecutor cannot be compelled to give his *inſtance*, he cannot refuſe his *concourſe*. Were the lord advocate to refuſe it, either the court would compel him to give it, or perhaps the cauſe might be allowed to proceed without it [b]. There ſeems to be no If he refuſe it, what is the remedy?

[a] Hume's Criminal Law, v. iii, c. 5, p. 197.

[b] "Had the advocate refuſed his "concourſe, he might have been "compelled to give it; for every one "is entitled to juſtice; but he can-"not be forced to proſecute." This was lord Alemour's opinion, as mentioned by Mr. M'Laurin, p. 298.—Mr. Hume (Criminal Law, v. iii, p. 200;) mentions a caſe of a reduction and improbation, where the court of ſeſſion ordained the lord advocate to give his concourſe, which

§ 4. INSTANCE AND COURSE OF THE PROCURATOR-FISCAL.

reaſon to doubt that local judicatures have the ſame controul over their fiſcals. With reſpect to the other alternative, of the criminal action going on without the concourſe, Mr. Hume mentions it as a confirmation of the right of the individual to force the reception of his complaint: that, in the caſe of colonel Charteris, where the lord advocate's concourſe was withdrawn at the calling of the libel, after a full debate, the trial went on at the inſtance of the private complainer [a]. Mackenzie ſeems to ſtate that even criminal cauſes could go on without the public proſecutor's concourſe or inſtance [b]. In this reſpect, then, (if we may venture to ſpeak of a foreign law) the right of private proſecution ſeems to be freer and more unreſtrained with us than in England; where the attorney-general is ſaid to have the power of ſtopping any criminal action by iſſuing his writ of *nolle proſequi* [c].

Engliſh law.

Can the fiſcal give his concourſe to two oppoſite libels?

THE procurator-fiſcal muſt ſometimes give his concourrence to two oppoſite libels. If the defender finds it adviſable to meet the proſecution by raiſing a counter one, though he is giving a different colour to, and drawing oppoſite concluſions from, the ſame facts, he, as well as his antagoniſt, is intitled to the ſanction of the fiſcal's concourſe. This very often happens in thoſe contentions, petty riots, aſſaults, &c. which afford the moſt frequent ground of criminal proſecution before the juſtices.

Encroachments on public roads, &c.

COMPLAINTS touching matters, which, though rather of a civil nature, yet reſpect the public chiefly, ſuch as public nuiſances, encroachments on high roads, &c. &c. are more fit for the procurator-fiſcal to inſiſt in, than for any private in-

he had refuſed; and conſiders this to found a probability of the like interpoſition by the court of juſticiary touching any criminal proceſs before themſelves.

a 1723, Nov. 11. Hume, ibid.

b Obſervations on the acts, p. 270.

c "But," Mr. Woodeſon obſerves, "if he attempt to exerciſe this power "in a proceeding on a penal ſtatute, "the proſecutor need not refrain "from recovering his portion of the "ſum at which the prohibited delin-"quency is appretiated." Vin. Lec. 38.

dividual, whoſe intereſt, real and important though it may be, is yet not *peculiar*.

§ 4. INSTANCE AND CONCOURSE OF THE PROCURATOR-FISCAL.

If the proſecution be raiſed at the inſtance both of the procurator-fiſcal and of the private party, either of them may be abſent, or diſclaim the proceſs, without invalidating the right of the other. In like manner, the private party's deceaſe does not put an end to the inſtance of the procurator-fiſcal. In the caſe of colonel Charteris, already noticed, where a private perſon was proſecutor, with *concourſe* only of the lord advocate, the proſecution was allowed to proceed after this concourſe was withdrawn. Actions at the *inſtance* of the private party, with the procurator-fiſcal's *concourſe*, Mr. Hume ſeems to think, ought to fall, by the private parties withdrawing his *inſtance* [a]. But he mentions a caſe of battery and invaſion, where the lord advocate was allowed to inſiſt *ad vindictam publicam*; although the diet was deſerted "as far as concerned the reparation of damages and injury done to the private perſon, who did not "appear to inſiſt in the action [b]. If the party proſecuted criminally by the procurator-fiſcal *ad vindictam publicam*, obtains an *abſolvitor*, how far does this prevent the ſame facts from either being again made the foundation of a criminal proſecution, on the one hand, at the inſtance of the lord advocate, before the court of juſticiary? or, on the other, of a civil action of damages at the inſtance of the private party, concluding merely for reparation of his loſs, either before the ſeſſions, or any other court? The *firſt* of theſe queſtions has been decided twice; once in the caſe of an *abſolvitor*, by the ſeſſions; the other was by the bailies. Neither was found to bar the lord advocate from bringing an indictment againſt the parties before the court of juſticiary. But both thoſe proſecutions had been colluſively

If one of two purſuers withdraw his inſtance?

If the procurator-fiſcal withdraws his concourſe?

Abſolvitor from a criminal action at the inſtance of the fiſcal.

Does it prevent an action of damages?

a Crim. Law, vol. iv, c. 9, p. 14.
b 1727, Dec. 18 and 26, Couhoun and Buntine.

§ 4. INSTANCE AND CONCOURSE OF THE PROCURATOR-FISCAL.

brought before the inferior courts for the purpoſe of preventing the trial before the court of juſticiary [a]. The *other* queſtion is ſtated by Mr. Hume [b] as a ſubject of inquiry not yet ſettled by deciſions, at leaſt with reſpect to the lord advocate; and with reſpect to inferior public proſecutors, it plainly depends on the ſame principles.

Public proſecutor's privileges.

THE public proſecutor, diſcharging a neceſſary and official duty, is not required to find caution to inſiſt, nor to give his oath of calumny. Neither, if he does not ſucceed, is he liable in damages or expences [c]. But that the party unjuſtly proſecuted may not be without redreſs, Mr. Hume [d], in the caſe of the lord advocate at leaſt, inclines to think, againſt the opinion of Mackenzie [e], that he is bound to give up his informer.

§ 5. DEPENDERS.

V. No claſs of perſons have any privilege to exempt them from being called as defenders before the ſeſſions of the peace.

Noblemen?

Scottiſh noblemen, by the treaty of Union, enjoy the privilege of Britiſh peers, and cannot be tried for any felony but in the court of the lord high ſteward of Great Britain. But for offences of a lower degree, aſſault, &c. &c. both Engliſh and Scottiſh peers muſt anſwer like other ſubjects in the ordinary courts of juſtice [f]. They cannot plead any privilege againſt the juriſdiction of the juſtices, whether in civil or criminal matters [g]. Although it be merely from

[a] 1730, January 26, February 9.—John Walker, indicted by the lord advocate to ſtand trial for aſſaulting an exciſe officer; for which offence he had been proſecuted by the procurator-fiſcal before the juſtices of the peace of Forfarſhire, and acquitted; and 1758, December 26, Janet Macrachan and others indicted for a riot, for which they had already been tried by the magiſtrates of Dunbar, and alſo acquitted.

[b] Criminal Law, vol. iv, c. 17, p. 338.

[c] Whether the public proſecutor be entitled to expences from the defender, is preſently *ſub judice* of the court of judiciary.

[d] Criminal Law, vol. iii, c. 5, p. 216.

[e] Obſerv. on the ſtatutes, p. 6.

[f] Hume, Crim. Law, vol. iii, cap. 1, p. 23.

[g] The limitations impoſed upon

their ſuppoſed relation to police that certain actions, containing pecuniary concluſions, are competent before juſtices of peace; yet the rule, which obtains in civil actions, ſo far applies, that perſons under age could not be called without their tutors or guardians; as, for example, in concluſions for wages, or an action for payment of an account under the ſmall debt act. § 5. DEFENDERS.

BUT in all proſecutions of a criminal nature, as for aſſault, petty theft, &c. it is ſufficient to call the delinquent, whether under age, or clothed with a huſband, without calling the guardian or the huſband; neither does it make any difference that the concluſion is for pecuniary reparation [a]. Incriminals, the offender alone called without tutor or huſband.

IN like manner, an infane perſon cannot be called in any civil claim, without ſome perſon to act for him; nor can he be puniſhed for ſuch offences as he has committed during that ſtate of mind. But, if danger may be apprehended from him, he may be ſecured and reſtrained by the juſtices, under that charge of the public ſafety and tranquillity which is committed to them as magiſtrates of the police [b]. Infane perſons.

THE debtor, or delinquent, may happen to die before the raiſing the action, or before litis conteſtation taking place; or before the pronouncing of the decree, or before execution. In thoſe circumſtances the action either falls, or is tranſmitted againſt the heir. Tranſference of the action *againſt* the repreſentative.

IN the *firſt* place, all actions (in the language of the civil law) *rei perſecutoriæ*, or (as lord Bankton terms them) *recuperatory* [c], viz. thoſe by which "we purſue barely for recovery

their juriſdiction, in the caſe of perſons of rank, as we have already ſeen, (b. i, c. 1, § 3, p. 14,) were removed by queen Anne's act.

[a] How far the huſband is liable for ſuch fines, and whether they can be the ground for immediate incarceration of the perſon of the wife, will come under our notice afterwards.

[b] The puniſhment and reſtraint of minors, or infane perſons, will be noticed afterwards.

[c] B. iv, tit. 24, § 4.

§ 5. DEFENDERS.

"of a ſubject that is ours, or of a debt which is unjuſtly "withheld from us by the defender [a]," paſs againſt the heir, whether they ariſe from contract or delinquency, and whether there has been litis conteſtation with the deceaſed or not. "In this ſpecies of action damages are included; "for the purſuer is as truly a ſufferer in his patrimonial in- "tereſt by that damage, as by the loſs of the ſubject itſelf, "or its value [b]." This is agreeable to the moſt approved interpretation of the civil law [c]; although in actions ariſing from delinquency, Cujas maintained that the heir was no farther liable than he had been benefited by the thing in diſpute, *quatenus ad eum perveniſſet* [d].

Actions reipersecutorie.

Penal actions.

IN the *ſecond* place, *penal* actions fall by the death of the delinquent, and do not tranſmit againſt the repreſentatives, unleſs there was litis conteſtation with the predeceſſor [e]. Neither can any claim of a penal nature be pleaded againſt the heir in the form of *exception* [f].

Litis conteſtation.

BUT *litis conteſtation* implies a judicial contract and new ground of obligation, by which the action is perpetuated

[a] Erſk. b. iv, tit. 1, § 14.

[b] Ibid.

[c] Vinnii Inſtitut. lib. iv, tit. 12, § 1. Voet. ad Pandect. lib. 44, tit. 15.

[d] Cujac. Obſ. lib. 7, c. 37; et lib. 13, c. 39.

[e] Erſk. b. iv, tit. 1, § 70.

[f] 1798, March 6; lady Chriſtian Graham and others againſt the earl of Hopetoun.

Lady Chriſtian Graham brought an action againſt the earl of Hopetoun, to account for the marquis of Annandale's executry. His lordſhip claimed credit for his father's diſburſements, when tutor for the marquis.

Objected.—That in terms of the act 1672, no ſuch credit could be allowed, the late earl having neglected to make up tutorial inventories.

Anſwered.—The objection reſolves into a claim for a penalty; and therefore, though it might have been relevant in a queſtion with the late earl, it cannot be ſtated againſt the preſent defender, in accounting for his father's intromiſſions.

Replied.—The preſent action is in no reſpect penal. The purſuers claim nothing but the moveable funds of the marquis in the hands of the defender. *They only object to a counter*

and tranſmits againſt heirs [a]. In private actions, therefore, § 5. DEFENDERS. ariſing from delinquency, where there is a private party having an intereſt and title to purſue for the penalty; ſuch as, among the Romans, *actio furti, vi bonorum raptorum*; in our own law, *actions upon the paſſive titles for vitious intromiſſion; concluſions of violent profits; damages for an aſſault and battery*, &c.; in ſuch actions, if the parties have joined iſſue, and the cauſe has gone the length of *litis conteſtation*, the purſuer is underſtood to have thereby obtained ſuch a *jus quæſitum* in the conſequences of the action, that his claim does not fall by the death of the defender, but, like any civil action, "is transferred againſt ſome perſon alive who repreſents "him [b]." This is called a transference *paſſive*; and may take place againſt the defender's heir, whether he be ſerved heir or not; as "his wilfulneſs ought not to bar the creditor from conſtituting his debt [c]. Yet a transference cannot proceed againſt a debtor's apparent heir till the *annus deliberandi* be expired; and the purſuer, in the transference, ought firſt to charge him to enter heir, if he cannot otherwiſe fix a paſſive title againſt him. Transferences being incidental, can be pronounced only by the judge before whom the principal action depended. Where the repreſentatives do not reſide in the territory of that judge, the ſupreme court alone can transfer [d].

claim as his part, expreſsly diſallowed by the act 1672.

Duplied.—The ſame defence is competent to heirs againſt penal claims, whether they be brought forward in the way of action or exception. Stair, 10th July 1666, Cranſton againſt Wilkinſon.—Forbes, 15th December 1710, and 17th January; lord and lady Ormiſton againſt Hamilton. The lords found, "that any claim which might "have been competent to the pur-"ſuers againſt the deceaſed John earl "of Hopetoun, on account of his "not having made up judicial inven-"tories, in terms of the act 1672, is "of the nature of a penal action, "and does not tranſmit againſt the "defender James, now earl of Hope-"toun, as heir to his father." Fac. Coll.

[a] Erſk. b. iv, tit. 1, § 70.

[b] Ibid, § 60.

[c] Ibid.

[d] 1754, December 11; William Roſs againſt George and James Maxwells. Fac. Col. During the dependence of an action at the purſuers in-

§ 5. DEFENDERS. Criminal actions.

IN the *third* place, actions *purely criminal*, purſued by the public proſecutor *ad vindictam publicam*, although concluding for a pecuniary ſum only, do not tranſmit againſt the heir, even when *litis conteſtation* has taken place with the delinquent [a].

ſtance againſt Alexander Maxwell, before the ſheriff of Hadington, Alexander died; and the purſuer called, by *letters of ſupplement*, George and James, both reſident in London, as his repreſentatives, to appear before the ſheriff; who found they were not legally ſummoned. The caſe being advocated, on the head of iniquity, "the lords ſeemed to be of "opinion, that in caſes of this kind "the proper form of proceeding was "to have called the defenders by "transference to appear before the "court of ſeſſion; and then to have "advocated the cauſe from the ſhe-"riff, not for iniquity, but for defect "of juriſdiction. However,

"They advocated the cauſe, and "remitted to the ordinary to pro-"ceed."

[a] 1773, February 18; Robert Gray, procurator-fiſcal of the dean of guild court of Edinburgh, againſt James Paxton and others, repreſentatives of John Paxton, vintner in Edinburgh. This caſe relating to an offence cognizable by the ſeſſions of the peace, muſt be more particularly noticed.

Upon a complaint to the dean of guild of Edinburgh, in name of George Marſhall, vintner, in Dumfries; James Burges, his ſervant; and Robert Gray, procurator-fiſcal, againſt the ſaid John Paxton; on this ground, that Burges having ſet up ſome hackney horſes, the property of Marſhall, in Paxton's ſtables, he and his ſervants, on feeding them, uſed a meaſure ſhort of the legal meaſure; that he had uſed this falſe meaſure for years paſt; and concluding for a fine and expences. The dean of guild pronounced the following judgment: "find the complaint proven; fine and "amerciate the defender John Pax-"ton in 100l. ſterling, payable to the "procurator-fiſcal for behoof of the "Charity Workhouſe of Edinburgh; "grant warrant to the officers of court "to poind his goods, or impriſon his "perſon within the tolbooth of Edin-"burgh, till payment of that ſum; find "the defender liable in 10l. ſterling, of "damages to the private complainer; "find him liable in full expences, "and decern." Paxton brought a ſuſpenſion of this judgment. The lord ordinary took the cauſe to report, and informations were lodged; but before they were adviſed Paxton died. A ſummons of transference was executed againſt his ſon; and having been called in court, the action was transferred in *ſtatu quo*, reſerving all objections to the defender. The private party afterwards diſclaimed the action, which was carried on by the procurator-fiſcal alone. The lords found, "that the "action being *purely criminal*, cannot "now proceed againſt the preſent "defender, the heir of John Paxton; "and therefore ſuſpend the letters "*ſimpliciter*, and decern." Wallace's Deciſions, No. 59.

In the caſe Smith againſt Warrands, 1802, Dec. 15, litis conteſta-

VI. IT is frequently doubtful in what county to commence the ſuit or proſecution. From miſtakes in this matter, procedure, which has occaſioned both trouble and expence, may become nugatory and unavailing. It may be neceſſary, therefore, to underſtand the principles which regulate this branch of our law in the caſe of inferior or county juriſdictions. § 6. FORUM.

CIVIL juriſdiction, Mr. Erſkine obſerves [c], is founded, either when the defender reſides, or is poſſeſſed of ſome eſtate or ſubject within the territory; becauſe the judge can enforce his decree, as well by awarding execution againſt the effects, as againſt the perſon, of the defender. Juriſdiction, origin of.

THIS applies, however, to the caſe only of the ſupreme court, which is the common *forum* to all the ſubjects, and to which, when abroad, they can be ſummoned by proclamation at the pier and ſhore of Leith: for all actions muſt commence by citation, which is either perſonal, or at the dwelling-houſe, or at the market croſs of Edinburgh, and pier and ſhore of Leith [d]. But county, or local, courts, have no method of citing perſons out of their juriſdiction, whether they reſide abroad, or only in a different part of the ſame kingdom. For letters of ſupplement, an extraordinary remedy for a particular inconvenience [e], are not iſſued by the ſupreme court to compel a perſon reſiding in one county to appear as defender in the courts of another county, merely becauſe he may have property there. Citation.

FORUM domicilii, therefore, is the principal *forum* with Domicile, what is it?

tion was found not to ſubject the heirs in the *treble forfeiture* introduced by 12 Anne, c. 16, reſpecting uſury.

[c] B. i, tit. 2, § 16.

[d] B. i, tit. 2, § 17.

[e] Letters of ſupplement are granted to cite witneſſes who reſide without the juriſdiction where the cauſe is carrying on; or where it is neceſſary to call a perſon out of the juriſdiction to appear, not as principal defender, but for his intereſt; or in any caſe where there is a particular reaſon for not bringing the cauſe in the juriſdiction where the defender lives.

§ 6. FORUM. reſpect to inferior judicatures. A domicil is the dwelling place which a man chooſes for a fixed abode to himſelf and his family. Neither a pleaſure-houſe, to "which he goes "only by ſtarts [f];" nor a friend's houſe, where he may be on a viſit; nor an inn, where he may have put up for ſome time [g], is a legal domicile.

To prevent diſputes upon this point, a rule is received by cuſtom, that the place where one has reſided with his family forty days immediately preceding his citation, is his legal domicile, as to the queſtion of juriſdiction [h]. Where a perſon has two different houſes in different juriſdictions, which appear equally entitled to this appellation, he is liable to both juriſdictions [a]. And if, on the other hand, he be engaged in ſuch a way of life as to have no fixed reſidence, for example, if he be a ſoldier, or a travelling merchant, a perſonal citation againſt him is ſufficient to eſtabliſh a juriſdiction over him, in the judge of that territory, where he is found [b].

THESE general principles, plain as they may appear, often give riſe to queſtions of great puzzle and intricacy; ſome of which will come under our view in a ſubſequent part of this work.

DOMICILE, ſo far at leaſt as reſpects local and ſubordinate judicatures, is the chief ſource of criminal juriſdiction likewiſe. It is competent to proſecute a man in the place where he dwells, even for offences (the tranſgreſſion of a penal ſtatute for example, as the caſe of the game act, an aſſault, or affray, &c.) which he may have committed in a

[f] Erſkine, b. i, tit. 2. § 16.
[g] Ibid.
[h] Ibid.
[a] Erſk. ibid. Fount. 15th July 1701. Spottiſwood.
[b] Fount. 12th November 1709. Lees. Erſk. ibid.

different juriſdiction [a]. In this matter the practice of inferior courts, more than that of the ſupreme tribunal, coincides with the doctrine of the civilians, and of the German commentators. For, however it may ſound, "the queſtion, whether a "man, who had committed a crime in Italy, and fled to "Britain, while Britain was a province of the Roman em- "pire, was to be tried in Britain or Italy, is not intrinſical- "ly in the leaſt different from this, whether a man, who "commits a crime in the ſhire of Linlithgow, and flies in- "to that of Edinburgh, is to be tried in the one county or "the other. The ſame law governed both countries; and "wherever the offence was committed, it was ſtill an of- "fence againſt that law [b]." Not only is the law the ſame in the different counties, but the aſſiſtance of the ſupreme court can be obtained to enforce the attendance of witneſſes neceſſary on both ſides. There can be no reaſon, therefore, to doubt of the competency, either of a criminal action for puniſhment, or a civil action for damages, brought by the complainer in the juriſdiction where the delinquent dwells, although the offence may have been committed in another county. § 6. FORUM.

BUT if no private party complain, nor any notice be taken by the fiſcal of the county where the offence was committed, can the fiſcal of the juriſdiction, where the delinquent reſides, call him to account, *ad vindictam publicam?* It is plain the offence was no diſturbance of the peace of that diſtrict of which he had the charge. But Mackenzie [c] ſays expreſsly, "with us criminal purſuits are ſuſtained at the "inſtance of the procurator-fiſcal of the territory where a "man dwells, for crimes committed without the territory, "though no private party inform: for we ſee (ſays he) "that fathers do, and are obliged to puniſh their children Can the judge, where he reſides, *proprio motu*, call him to account for offences committed out of the juriſdiction?

a Mackenzie, Crim. Law, part ii, t. 2, § 79.

b M'Laurin, No. 76.

c Crim. part ii, tit. 2, No. 2.

§ 6. FORUM. "for faults done by them, even without their own family; "and a judge is, in law, inſtead of a father to his own "people; and ſhould endeavour that they keep themſelves "free from all guilt."

WHATEVER may be ſaid reſpecting offences, which have their whole courſe and final completion in another juriſdiction, Mackenzie's opinion evidently holds in the caſe of offences which have a continuance of time and ſucceſſion of facts, as of one going out of the juriſdiction to ſteal poultry, break gardens, or kill game unlawfully, and bringing home the unlawful ſpoil, and uſing it within the juriſdiction [a].

FORUM domicilii then is competent for the trial of offences committed in a *different county*. But does the ſame thing obtain where the offence has been committed in a *foreign country*, as England, Ireland, or beyond ſeas? A perſon who has aſſaulted, or otherwiſe injured, another in London or Paris, comes to reſide in this country, can the injured party proſecute him before the ſeſſions of the peace, ſheriff, ſtewart, or borough, court, of the juriſdiction where he may happen to dwell?

Offences committed abroad. THE competency of the high court of juſticiary to take cognizance of theft committed in a foreign country, was keenly debated in the caſe of Taylor; who had no domicile in Scotland, but was apprehended there, in poſſeſſion of horſes which he had ſtolen in England. "The juriſdiction of the court was

[a] Mackenzie (Crim. part ii, t. 2, § 2.) farther adds, "That the "judges of the place where the ma- "lefactor dwells, may proceed againſt "him, not only if they find him pre- "ſent, but though he be abſent, l. i, "*et authen. qua in provincia, C. ubi de crim.*; and thus the lords ſuſtained "an improbation againſt Burghtoun "in July 1672; though the deed for- "ged concerned an Iriſh eſtate, and "though he dwelt in Ireland, and "was cited in Scotland."

§ 6. FIORUM.

"objected to; that, as it appeared from the libel, the crime "alleged againſt him had not been committed in Scotland; "over which country alone the juriſdiction of this court "extends, no trial could proceed [a]." The court, on 9th March 1767, pronounced the following interlocutor: "They "repel the declinature offered to the juriſdiction of the "court, and find the ſaid indictment relevant to infer the "pains of law; and remit the pannel, with the indictment "ſo found relevant, to the knowledge of an aſſize [b]."

In this caſe, though a variety of topics were pleaded in the learned informations, it is ſaid, "that the main ground "of the judgment was the circumſtance that the crime "was truly of a continued and ſucceſſive nature, ſo as to be "renewed and carried on in Scotland [c]." And "ſo far as "I have obſerved, (adds Mr. Hume) a libel has not in any "caſe been ſuſtained in the court of juſticiary againſt a "perſon reſident in Scotland for a crime, ſuch as murder, "aſſault, perjury, which had its whole courſe and final "completion in the realm of England [d]. Much leſs, there-"fore, can any ſuch pretenſion be competent, with reſpect "to crimes committed by Scotſmen in other countries, "which are abſolutely and completely foreign [e]."

The great objection againſt trying offences committed in a foreign country, is the unavoidable ignorance of the court by which the offence would be tried of the foreign laws; which, however, ought to determine both the criminality to be attached to the offence, and the puniſhment to be inflicted upon the offender.

But will a different rule obtain, if the action (whether

[a] M'Laurin, No. 76.
[b] Ibid.
[c] Hume, Crim. Law, vol. iii, p. 85.
[d] Ibid.
[e] Ibid.

§ 6. FORUM. with or without the concourſe of the procurator-fiſcal) brought by the individual aſſaulted, or otherwiſe injured, in a foreign country, concludes, not criminally for puniſhment, but for pecuniary reparation only? May not an injury ſuſtained abroad, be the foundation of an action of reparation here, juſt as a contract executed, or a debt contracted abroad, is the foundation reſpectively of an action of *implement*, or of payment? in neither of which latter caſes the creditor can loſe by the debtor's change of reſidence.

THERE has been no deciſion of this point; but ſtill as the action is rather of a criminal nature, at leaſt with reſpect to the ſource of the obligation; and as the defender might be able to exculpate himſelf by the evidence of witneſſes, whoſe attendance cannot be compelled in this country, the ſafer opinion ſeems to be that ſuch an action would not be competent.

IN civil matters an oppoſite rule obtains. Thus a will, if executed agreeably to the law of the place, carries the moveable ſucceſſion wherever ſituated. In the ſame manner, a foreign bill or bond is good, though defective, in the ſolemnities requiſite by our law to give validity to ſuch deeds. The judges, in ſuch a caſe, take evidence of the foreign law, as of a matter of fact: for example, the opinion of ſome practitioner of eminence in the law in diſpute. Thus alſo, a marriage, valid by the laws of the place where it was entered into, is good all the world over. A marriage entered into in this country, according to the forms of the Scottiſh law, is ſuſtained in England. In like manner, the decree of a French court, by which two perſons, who had been married in France, were divorced on account of the difference or diſagreement of their tempers [a], was not conſidered by the court of ſeſſion as

[a] *Pour cauſe d'incompatibilité d'humeur et de caractère.*

§ 6. FORUM.

a bad divorce here; nor the marriage of one of the parties to a native of this country, held invalid [a]. So alſo the *ſtatus* of a perſon muſt be determined by the law of his domicile [b]. On the ſame principle of *comitas*, the law of the place where the deceaſed died regulates his inteſtate moveable ſucceſſion. And the ſame principle has ſince been carried the farther length, of finding that the moveable funds and effects of a bankrupt, wherever ſituated, muſt be regulated by the law of his domicile [c].

But in criminal matters greater ſtrictneſs is required. Thus, whatever effect we may give to foreign decrees in civil matters, Mr. Hume expreſſes ſome doubt whether the courts of this country would ſo far regard the decree of a foreign *criminal* court, as to authoriſe the execution of a warrant againſt a perſon living here to the effect of his being carried abroad; and, of courſe, how far the late inſtance of the ſtates of Holland delivering up William Brodie [d], or conniving at his ſeizure, can be juſtified on ſound principles,

[a] 1801, June 18; Fenwick. The validity of the divorce did not fall to be expreſsly ſtated in the *interlocutor*, becauſe the point at iſſue did not abſolutely depend on the validity of the ſecond marriage; which, however, was the defence principally pleaded; and from the opinions delivered, their lordſhips did not appear to entertain any doubt that the *French* divorce was equally valid with the *French* marriage.

[b] This was decided in the late caſe of Sheddan againſt Patrick; 1ſt July 1803. An American, reſiding in that continent, married a wife, by whom he had previouſly had a ſon, born in concubinage. The father died in America, but poſſeſſed of an heritable eſtate in this country. The ſon, though a baſtard in America, where there is no legitimation *per ſubſequens matrimonium*, claimed the Scottiſh eſtate; pleading, that marriage being once admitted, full effect muſt be given to it, agreeably to the laws of this country.

But the court were of opinion, that the parents having been married, and always reſided in America, the claimant's *ſtatus* muſt be determined by the law of that country; and awarded the eſtate to the nephew, as neareſt lawful heir.

[c] 1ſt July, 1803; Read againſt Struther.

[d] Tried for houſe and ſhopbreaking in 1788.

§ 6. JORUM. or would receive any countenance from the practice of this country.

FORMERLY the ſame diſregard was paid to the decrees of foreign courts, even in civil matters. The firſt ſtep was allowing a preſumption in favour of their juſtice: at length, in the progreſs of improvement, general utility became better underſtood, and more liberal principles were adopted; and in certain caſes ſuch decrees are held as concluſive.

SPECIAL ſtatutes were paſſed [a] in England and Scotland for the mutual conveniency of both countries, to ſupply the defects of the common law; and providing, that if any perſon having ſtolen money, goods, or other effects, in either part of the united kingdom, ſhould afterwards have the ſame, or any part thereof, in his poſſeſſion, in the other part of the united kingdom, it ſhould be lawful to indict, try, or puniſh, ſuch perſon for theft or larceny, in that part of the united kingdom where he had ſuch money, &c.; as if the ſaid money, &c. had been ſtolen in that part of the united kingdom. But all other offenders, with the exception of thieves alone, muſt be tranſmitted for trial to the country where the crime was committed.

Domicil forum deprehenſionis. THE obſervations that have been made with reſpect to *forum domicilii*, apply alſo to *forum deprehenſionis;* of which, Mackenzie obſerves, "vagabonds may be puniſhed wher- "ever they are apprehended; for, having no certain domi- "cile, every place is in *ipſorum præjudicium* allowed to be "their domicile. *Boſſ. de foro compet. num.* 69; and he "is ſaid to be a vagabond, who has no certain dwelling, *li-* "*cet habeat domicilium originis;* theſe our law calls duſti-

[a] 1612, c. 2; Eng. ſtat. 7 James I, c. 1; and 13 Geo. III, c. 31.

"foots; and ſuch are our Egyptians, ſturdy-beggars, who, "though they may pretend to have a dwelling, to which "they may ſometime retire; yet, ſince ordinarily they uſe "to wander, and do things unlawfully, they ought to have "no benefit by that domicile [a]." § 6. FORUM.

FORUM delicti is the prime and moſt proper *forum* with reſpect to the high court of juſticiary, which acquires a juriſdiction chiefly, if not ſolely, from the circumſtance that the crime was committed in Scotland [b]. If either a ſtranger or native, though here only tranſiently, commit an offence, and be found, he may be tried in the high court of juſticiary as the *foro delicti*. Although, if the foreigner eſcape to parts abroad, after offending, no *fugitation*, or outlawry, can regularly paſs againſt him, as it could againſt the native; or if, *per incuriam*, any ſuch proceeding ſhould take place, it will not be followed with the confiſcation of any property he may have in Scotland at the time, or may afterwards acquire there [c]. Forum delicti.

IN like manner, from what was ſtated above, it will be evident that the mere circumſtance of a treſpaſs being committed within a county gives the local magiſtrate no juriſdiction, unleſs the delinquent be taken within it. If one aſſaults another, or commits any other offence, and is taken, the ſheriff, magiſtrate, or juſtice of peace, before whom he is brought, may order him to be impriſoned, unleſs he gives ſecurity to appear before him, to anſwer for the offence. If he eſcape, as already obſerved, the action can be brought only in the juriſdiction where he reſides. The local judge would not be competent to the action, merely becauſe the

[a] Mackenzie, Criminal Law, part ii, tit. 2, § 3, p. 181.
[b] Hume, Criminal Law, vol. iii, cap. i, p. 89.
[c] Ibid.

§ 6. FORUM. offence was committed within his bounds, unleſs the der was perſonally apprehended.

Forum originis. *FORUM originis*, which is daily leſs regarded even preme courts, needs ſcarcely to be noticed, as it is to imagine a caſe where an inferior judge is compet on that footing.

CHAP. III.

The Jurisdiction of the Sessions in General.

§ 1. JURISDICTION OF THE SESSIONS HOW DIFFERENT FROM JUDGES ORDINARY.

I. JUSTICES of the peace ſtand on a different footing from judges ordinary. The latter, the native judicatures of our common law, conceal their origin in the obſcurity of the moſt ancient times. The former were introduced by poſitive and comparatively recent enactments. The one are competent in all cauſes whatever which are not ſpecially limited to particular courts. The other have no juriſdiction, excepting what is either expreſsly committed to them, or is ſuppoſed to be implied in the particular nature and object of their inſtitution.

§ 2. NATURAL LIMITATION OF THEIR JURISDICTION.

II. JUSTICES of the peace being appointed chiefly for the purpoſe of preventing and puniſhing breaches of the peace, and petty delicts againſt the police, have naturally no *civil* juriſdiction. Sometimes they exerciſe a ſpecies of juriſdiction, which appears to approach very near to it. But ſtill it is under ſome idea, direct or remote, of its connection with the conſervation of the peace. For example, what may appear at firſt view to be rather anomalous, the ſeſſions daily award aliments to natural children, while they are not competent to alimentary queſtion betwixt law-

§ 2. NATURAL LIMITATION OF THEIR JURISDICTION.

ful relations. But their competency in the former caſe very naturally ariſes from their criminal or police ſuperintendency. They have not only power by ſtatute to fine perſons who commit fornication, but as guardians of the police, may farther impriſon them till they find ſecurity that the child ſhall not burden the pariſh.

Bygone aliment.

So far this branch of their juriſdiction is founded on principle. From hence, however, has ariſen a practice, ſanctioned by inveterate uſage, of their ſuſtaining themſelves competent to take cogniſance of actions, brought, at the diſtance of years, againſt the father of the baſtard, by the mother, or other perſon, who may have been at the expence of its aliment, for repayment of the money, with intereſt. But, as the child already grown up can no longer be a burden on the pariſh, ſuch a queſtion has no more to do with police, nor belongs more properly to the juriſdiction of this magiſtracy than the alimentary claims of lawful relations, which are competent only before the ordinary courts of law. It is nowiſe different from a civil debt.

ANOTHER example of their exerciſing ſomething like *civil* juriſdiction, is the power conferred on them by the general act 1661 [a], to compel maſters to pay their ſervants wages, "if the ſervants pleaſe rather to purſue for the ſame before "them than any other judge." But this power of ordering payment of wages, though in itſelf merely *civil* juriſdiction, naturally followed from thoſe powers, which, as a branch of their *police* juriſdiction, the ſame ſtatute had given them "to fix the ordinary hire and wages of labourers, work-"men, and ſervants;" and to puniſh thoſe who refuſed "to "ſerve upon the price ſet down for them." Accordingly, the ground which the ſtatute itſelf expreſſes for making them competent to pronounce decreets for payment of wages, is, "that the ſervants may be the more willing to

[a] § 15. Appendix I.

§ 2. NATURAL LIMITATION OF THEIR JURISDICTION.

"obey the ordinances," (as to fixing the rate of wages) "to be made by the ſaid juſtices." And ſo cloſely connected is the power to compel payment of wages with the power of fixing the rate of wages, that in England, where the former is not expreſsly conferred by ſtatute, the ſeſſions have acquired it by a liberal conſtruction of the courts of law. "Though the ſtatute gives them a power *only to ſet* "*the rate for wages*, and *not to order payment*: yet grafting "hereupon they have *alſo taken upon them to order payment*; "and the courts of law are indulgent in remedies for wages, "and therefore," &c [a].

Liberal conſtruction of their powers in one caſe in England.

§ 3. INSTANCES OF A LIBERAL CONSTRUCTION OF THEIR POWERS.

III. THIS matter of wages is one of the few caſes where the juriſdiction of juſtices has in this country alſo been extended beyond the ſtrict words of the ſtatute. The ſtatute empowers them to "decern and compel the maſters to "make payment of the fees *appointed by their ordinances* [b]. But, in practice, their competency in queſtions of wages has not been thus limited. The ſeſſions have entertained queſtions touching the payment of wages beyond that amount, due to ſervants of all deſcriptions, and whether the rate was fixed by the ſeſſions or not.

Servants wages.

THIS liberal conſtruction is agreeable to the Engliſh practice and authorities, which however, in this matter of wages, have not been uniform, but different at different times. The power of the ſeſſions to decree for payment of wages, if of the proper deſcription, never appears to have been queſtioned. But their opinions have not been uniform touching the deſcription of wages which it is competent to ſue for before the ſeſſions. Thus "in the caſe of K. and Gregory, "2 Salk. 484, there was an order to pay 40s. for wages *ge*"*nerally*; and becauſe it was not ſaid for wages in huſ"bandry, it was moved to quaſh it; for that the juſtices

Engliſh caſes touching wages.

[a] Burn, tit. Servants, § 4. [b] Ibid.

§ 3. INSTANCES OF A LIBERAL CONSTRUCTION OF THEIR POWERS.

" can only ſettle wages *in huſbandry*: but, by the court, w
" will intend it for ſuch wages, ſince the contrary doth n
" appear [a]." But in the caſe of K. and Helling, M. 3. (
" there was an indictment for not paying ſervants, recitir
" an order of two juſtices; whereby it appeared that 9
" ſterling was due, which the defendant refuſed to pa
" having had notice of the order. It was moved to qua
" the indictment, becauſe it doth not ſet out the labour
" the ſervant, and is only *generally for wages*; the juſtic
" have only juriſdiction in caſes of *huſbandry*; and the c
" der ought to ſhew that this was a matter within their j
" riſdiction." It was ſaid by juſtice Eyre, " the practice
" if an order be for paying wages, it is ſuppoſed to be f
" ſuch as the juſtices have power over. But Parker, Ch.
" and Pratt, J. were of another opinion; and in the ne
" term following, the indictment was quaſhed, Str. [b]" that
the action diſmiſſed on the head of incompetency. Th
latter conſtruction ſeems to have prevailed: for in the cal
K. and Clegg, M. 8. G. when " it was obſerved by judge Fo
" teſque, that in the caſe of ſervants wages, although juri
" diction is given only in huſbandry, yet orders have be
" held good, where it did not appear that the ſervice was
" huſbandry; therefore the court ſaid they would intend
" ſo, unleſs the contrary appeared." Lord chief-juſti
Pratt ſaid, " *this was always wondered at, and in my lo*
" *Parker's time was actually contradicted, in the caſe Ki*
" *and Helling; Str.* 475 [c]."

THE third ſection of the ſame general act, 1661, affor
another example of extending their powers beyond tl
ſtrict import of the words. It ordains them " to appoi
" prices for all handicrafts." This clauſe has been unde
ſtood to authoriſe them to fix the wages of craftſmen wit
in burgh, maſons, wrights, &c.; although no ſtatute giv

Liberal conſtruction of their powers in one caſe in our law.

[a] Burn, tit. Servants, § 4. [b] Ibid. [c] Ibid.

them that power, as the old act 1424 gives it to the magiſtrates of boroughs [a].

§ 3. INSTANCES OF A LIBERAL CONSTRUCTION OF THEIR POWERS.

THE Scottiſh ſeſſions having, in the manner already mentioned, acquired juriſdiction reſpecting wages, and being expreſsly entruſted with the charge of roads and ferries, have been in the practice of fixing the rates of poſting alſo. This power, which belongs not to the Engliſh ſeſſions of the peace, has been ſuſtained by the ſupreme court. But this ſubject, and the opinion of the houſe of lords in a late appeal reſpecting it, will fall more properly to be conſidered under the chapter touching police.

Rates of poſting.

THESE are perhaps the only inſtances of a liberal conſtruction extending the juriſdiction of this magiſtracy beyond the letter of the law.

§ 4. THEIR JURISDICTION STRICTLY INTERPRETED.

IV. THE general rule and inclination of the courts, are to limit them to the matters ſpecially committed to them. Thus the ſeſſions were found to be incompetent to judge in an action for ſhooting pigeons, founded upon two old ſtatutes of James VI, 1567, cap. 16; and 1597, cap. 270; by which it is not "leiſum to ſlay deare, raes, hares, wilde "fowles, or *doves*," (pigeons;) thoſe ſtatutes having been enacted prior to the inſtitution of juſtices of peace [b].

[a] See this more fully ſtated under police.

[b] 1797, Jan. 19; William Murray, with concourſe of the procurator-fiſcal of the county of Haddington, againſt Robert Turnbull and Adam Ruſſel.

"Dovecote.——Juriſdiction.——*A complaint for ſhooting pigeons, founded on the acts* 1567, *c.* 16, *and* 1597, *c.* 270, *cannot be competently brought before the juſtices of peace.*" This deciſion appears not to have turned altogether upon the priority of the two ſtatutes to the inſtitution of juſtices of the peace. It reſted upon other grounds. The remark reſpecting the date of the ſtatutes appears to have been made from the bench as an *additional* reaſon. The facts were, as ſtated in the Faculty Collection, theſe: William Murray, portioner in the village of Tranent, and proprietor of a pigeon-houſe in it, which had been

§4. THEIR JURISDICTION STRICTLY INTERPRETED.

In like manner, though juſtices of the peace be intruſted with the power of puniſhing the offence of the irregular celebration of marriage, yet ſhould the clergyman refuſe to

built by the family of Winton, while the barony of Tranent belonged to them, preſented a complaint to the juſtices of peace for the county of Haddington, with concourſe of the procurator-fiſcal, againſt Robert Turnbull and Adam Ruſſel, for ſhooting pigeons. The complaint ſtated, "that "by ſundry laws and acts of parliament, and particularly acts 1567, "c. 16, and 1597, c. 270, all perſons "are diſcharged from ſhooting at, or "ſlaying, of doves (pigeons), with "hagbuts, hand-guns, croſs-bows, "and piſtols, and taking of them "with nets and girns, under certain "penalties, payable to the judge and "apprehender; and more particularly by the Britiſh ſtatute 2 Geo. "III, c. 29, perſons are diſcharged "from ſhooting with intent to kill, "or by any means killing, or taking "with intent to deſtroy, any *houſe* "*dove* or pigeon, under the penalty "of twenty ſhillings, upon conviction, of oath of party, or one witneſs, payable to the informer or "proſecutor."

The defenders admitted they had killed a few pigeons; but they ſtated that there were no leſs than thirteen pigeon-houſes in the village, twelve of which belonged to perſons not qualified to build a pigeon-houſe; and that what they had done was abſolutely neceſſary to protect a field belonging to the father of Turnbull, in the immediate vicinity of the village, while it was ſowing with barley. The juſtices ordered Turnbull to pay 15s. and Ruſſel 5s. in name of fine and expences. An appeal to the quarter-ſeſſions was diſmiſſed, with expences.

In a ſuſpenſion, the lord ordinary found the letters orderly proceeded, and expences due.

In a reclaiming petition, it was *pleaded* for the ſuſpenders—"The "two Scotch acts founded on, introduced a general prohibition againſt "killing game with fire-arms, and "are now in deſuetude. Beſides, if "they were in force, the juſtices un"der them would be limited to in"flicting the ſpecial penalties there "in mentioned, which are eſcheat of "moveables, impriſonment, placing "on the ſtocks, and cutting off the "right hand. From the nature of "theſe penalties, it is farther evident "that ſuch complaints can only be "inſiſted in *ad vindictam publicam*, and "not at the inſtance of an individual "particularly when no proof of the "damage ſuſtained is offered.

"The ſtatute 2 Geo. III, c. 29, was "paſſed merely for the purpoſe of "amending certain Engliſh ſtatutes "and does not apply to Scotland."

Anſwered for the chargers—"The "Scottiſh acts founded on are ſtill in "force. It is no objection to the "judgment of the juſtices, that a ſe"verer puniſhment might have been "inflicted by them. The action in"troduced by the ſtatutes is popu"lar; and accordingly part of the "penalties is declared payable to "the apprehender."

§ 4. THEIR JURISDICTION STRICTLY INTERPRETED.

proclaim banns, the ſeſſions of the peace cannot afford the injured party any redreſs [a].

And the offences of ſcandal and verbal injury, though naturally tending to violence and diſturbance of the peace, are not cogniſable by the ſeſſions [b], unleſs there be ac-

The court had no occaſion to determine the merits of the complaint.

But it was obſerved, that lord Bankton's opinion, as to the legality of ſhooting pigeons, b. ii, tit. 3, § 167, is ill founded, and that his lordſhip afterwards admitted it to be ſo.

As to the competency of the complaint, it was

Obſerved—"The right to have a "pigeon-houſe is inſeparable from "property in land. The complainer "therefore, having no right to a pi-"geon-houſe, has no title to inſiſt in "the action. *Beſides, the juſtices of "peace have no juriſdiction under the "laſt ſtatutes founded on, which were "paſſed long before their appointment;* "and the 2 Geo. III, c. 29, does not "apply to Scotland."

The lords diſmiſſed the action as not competent in its preſent ſhape. Fac. Coll.

N. B. It ſometimes happens that juſtices of peace are competent to the execution of ſtatutes which paſſed prior to their inſtitution.

[a] Kilkerran, tit. Juriſdiction of Juſtices of Peace, No. 6, 1749, July 13; Hairgrieve and Janet Donaldſon againſt the miniſters and kirk ſeſſions of Linton and Eckford. The miniſters and kirk ſeſſions of thoſe two pariſhes having refuſed to proclaim the banns of the ſaid two perſons in their reſpective pariſhes for this cauſe, "that they would not comply "with the eſtabliſhed cuſtom to con-"ſign a dollar, which is to be reſtor-"ed in the event it appear that they "have not become impatient before "marriage, were by them purſued "before the juſtices of peace of Rox-"burghſhire for ſaid refuſal; who, "notwithſtanding a declinator of "their juriſdiction, proceeded to give "ſentence, *ordaining the reſpective ſeſ-"ſion clerks to make proclamation of the "purſuers banns on Sunday then next:* "*and after proclamation made, to give* "*proper certificates thereof, with certifi-"cation.*

"This ſentence being complained "of by bill of ſuſpenſion, the ordina-"ry, before whom it came, *refuſed the* "*bill;* but the ſuſpenders having re-"claimed, the lords appointed *the* "*bill to be ſeen, at the ſame time declar-"ing their opinion in ſuch a manner that* "*it is not likely the caſe will be again* "*heard of.*

"The lords were clear that there "lay no juriſdiction with the juſtices "of the peace to judge in ſuch mat-"ters, and the remedy in a caſe of a "groundleſs refuſal was thought to "be for the parties to proteſt upon "the refuſal to proclaim, and that in "that caſe there would be no penal-"ty due for marrying without pro-"clamation."

[b] 1711, July 17; Sharp of Hoddam againſt Maxwell of Cowhill.

"In diſcuſſing a ſuſpenſion at Cow-

§ 4. THEIR JURISDICTION STRICTLY INTERPRETED.

tually a breach of the peace by their aſſuming the ſhape of a brawl or uproar [a]; or unleſs the injury be done to the juſtices in relation to their office, when it becomes puniſhable by the ſeſſions, in virtue of the power neceſſarily lodged in every judicature to protect itſelf from inſult and interruption [b].

NEITHER are they competent to take cogniſance of an action at the inſtance of the private party againſt the officers of the revenue, touching an illegal ſeizure of foreign ſpirits for example; unleſs the ſeizure be made under circumſtances that it can be proceeded on as a riot; in which

" hill's inſtance, of a decreet obtained at the inſtance of the procurator-fiſcal, of the juſtices of peace within the ſhire of Dumfries; and John Sharp of Hoddam fining Cowhill in 400 merks for ſaying that Hoddam was guilty of ſeveral acts of falſehood, injuſtice, and malverſation, in his office: the lords found that *the juſtices of peace are not judges competent to cogniſce upon ſcandal, or a verbal injury.*" Forbes.

[a] Sir William Blackſtone conſiders libels among offences againſt the public peace, as being conſtructively ſo. Perhaps on the ſame account the ſeſſions ought to be competent to all queſtions of ſcandal and libels.

[b] 1752, February 4; Bell againſt Dundas. Dundas purſued Bell before the juſtices of peace for having injured him by a defamatory libel. Bell declined their juriſdiction; *pleading in a bill of advocation*, that juſtices of peace have no juriſdiction in the crimes of ſlander and defamation.

Anſwered for Dundas—The libel contains expreſſions which import a threatening to break the peace; and beſides, it reflects on Dundas for words uttered by him at the quarter-ſeſſions held by the juſtices of the peace, who therefore are proper judges of an injury offered to a member of their court. Even judges of inferior rank and leſs authority, may puniſh injuries offered to any of their number, on account of words uttered, or things done, in court; as appears from the deciſion, 14th November, 1679; magiſtrates of Kirkcaldy againſt Dougal. " The lords refuſed " the bill of advocation." In this caſe, the injury done to Dundas was not during the diſcuſſion of the regular buſineſs of the ſeſſion, but during a converſation reſpecting the detaining and opening poſt letters. This, it was pleaded, was a crime not competent to be tried before the ſeſſions, and of courſe, during that converſation, they were not to be conſidered as acting *judicially*; on the other hand, it was ſaid, that, as the grand jury of the nation, they were competent, at leaſt, to inquire into ſuch offences, and give information thereof. Fac. Coll.

caſe it will be no defence that the perſon complained of was an officer making a ſeizure [a].

§ 4. THEIR JURISDICTION STRICTLY INTERPRETED.

BUT though where the act of ſeizure is attended with a riot, the juſtices of the peace may puniſh thoſe guilty of the riot, whether officers of the revenue or not; yet they cannot take cogniſance of the legality or illegality of the act of ſeizure, unleſs in the particular caſes where the law has given them juriſdiction [b].

BY one deciſion, the juſtices of the peace were found competent in an action for the penalty incurred by tranſgreſſing the ſtatute of queen Anne, 1703, cap. 7, diſcharging "the importation of Iriſh victual, beef, and cattle,"

[a] Kilkerran, title Juriſdiction of Juſtices of Peace, No. 3, July 17, 1747; Ramſay againſt Adderton. Adderton, ſurveyor of the cuſtoms at Ayr, made a ſeizure of three caſks of brandy, as being carried without a permit. Ramſay, to whom the ſpirits belonged, brought a complaint before the juſtices of the peace, who repelled the declinature offered by Adderton to their juriſdiction; and having been ſatisfied on a proof, that the ſpirits had been lawfully purchaſed, and illegally ſeized, "decerned the ſpirits to be delivered up to "the comptroller, or 7l. 16s. ſterling "as the value, and condemned Mr. "Adderton in 4l. ſterling in name of "damages and expence." An appeal to the quarter-ſeſſions having been diſmiſſed as incompetent, Mr. Adderton brought the caſe by advocation under the review of the court of ſeſſion.

The ordinary found, "that the "juſtices of the peace had no juriſ"diction in this caſe, and advocated "the cauſe;" and alſo "found the "cauſe incompetent before the lords, "and diſmiſſed the ſame." And, on repreſentation and anſwers, "found, "that as nothing of its nature cri"minal, nor any irregularity what"ever, was alleged in the complaint "againſt the officer, other than what "is by the comptroller ſuppoſed to "ariſe from the bare act of ſeizure "complained of, the ſame was not "competent before the juſtices of the "peace; and that neither was it cog"noſcible by the court of ſeſſion, and "adhered to his former interlocu"tor;" and on adviſing petition and anſwers, the lords adhered to the interlocutor of the lord ordinary.

[b] 6 Geo. I, gives juriſdiction to the juſtices of peace touching the legality of ſeizures, where the quantity ſeized is within 63 gallons, in proſecutions brought at the ſuit of the officer, and where the iſſue to be tried is for unlawful importation. But this will fall more properly to be explained when we come to treat of the exciſe and cuſtoms.

§ 4. THEIR JURISDICTION STRICTLY INTERPRETED.

unleſs in times of ſcarcity, under certain regulations; although the ſtatute declares that the penalties may be proſecuted before the judge ordinary [a]. "This," lord Gardenſtone remarks, "is a ſingle deciſion; and I doubt if its authority ſhould be followed in a ſimilar caſe; as the juriſdiction of juſtices being ſpecial, and defined by particular ſtatutes, ſhould not be extended beyond the expreſs proviſions of the law [b]."

IT is unneceſſary to add, that our ſeſſions of the peace are not in general competent to civil cauſes. They were found incompetent in an action upon the paſſive titles for payment of 29l. Scots [c].

A SIMILAR deciſion was pronounced in the caſe of an action for payment of 50l. ſterling, conſiſting partly of a legacy bequeathed to the purſuer by one whom the defender repreſented, and partly of articles furniſhed to the latter himſelf, which it was offered to inſtruct by his oath. The juſtices pronounced decree againſt him; of which a bill of ſuſpenſion was paſſed, without caution or conſignation; the lords being of opinion that the decree was pronounced by an incompetent judge [d]. And in a ſtill later caſe [e], the court again found, that juſtices of peace have no juriſdiction in ordinary queſtions of debt. In one caſe, however, a de-

[a] 1712, January 24; juſtices of the peace of the ſhire of Ayr and their fiſcal againſt the town of Irvine and ſeveral inhabitants of that burgh. Forbes.

[b] MS. tit. Juſtices of Peace.

[c] Forbes, 1710, December 15; Forſyth againſt Ritchie. Walter Forſyth purſued Margaret Steedman, as repreſenting her deceaſed huſband, for payment of a debt due by him. "The lords advocated the cauſe; "upon this ground, that the juſtices "of peace are not competent to "judge in actions upon the paſſive "titles, except for ſmall debts, ex- "preſsly allowed by the act par- "liament 1661, to be purſued before "them."

[d] Agnes Ramſay againſt William Fergus, 10th February, 1756. Fac. Coll.

[e] 15th June, 1790; Robertſon againſt Sheddan. Fac. Coll.

§ 4. THEIR JURISDICTION STRICTLY INTERPRETED.

cree of the juſtices, for the ſum of 3l. 10s. ſterling, due for *graſs-mail*, or rent for paſture, was ſuſtained [a]; but whether in reſpect of the ſuppoſed competency of the juſtices in ſuch queſtions, or of their juriſdiction having been *prorogated*, both points being pleaded, does not appear. This deciſion was not univerſally approved of. Lord Gardenſtone remarks: "the "lords, during laſt ſeſſion, did ſuſtain a decree of the juſ- "tices for a ſmall debt; a precedent which, in my opinion, "tends to a dangerous latitude. *As we have no power to* "*enlarge or limit the extent of this ſtatutory juriſdiction*; and "in every caſe it will be an arbitrary queſtion, what is to "be conſidered as a ſmall debt within the powers of the "juſtices; but the ſafe, ſole, and, I think, the ſound "principle to determine the powers of our juſtices of "peace, is, "that they have no power or juriſdiction be- "yond what ſome law or ſtatute has expreſsly committed to "them [b]."

THIS principle, indeed, the court of ſeſſion have not only in general adopted, but carried ſo far as to find that the juſtices of peace could not acquire civil juriſdiction even by *prorogation*, that is, the conſent of both the litigating parties [c]. And we have had already occaſion to obſerve, that the ſupreme court have uniformly refuſed to authoriſe *letters of horning* and *caption* to paſs even upon the regular decrees of the ſeſſions.

[a] 24th January, 1769, Millar againſt Boyd. The court "repelled the rea- "ſons of ſuſpenſion, and found the "letters orderly proceeded."

[b] MS. tit. Juſtices.

[c] 1759, February 13; Barclay againſt Chriſtie. The action was for payment of a legacy of 100l. Scots. The juſtices found the legacy inſtructed, and ordained the defender to depone upon the paſſive titles. In a reclaiming petition, the defender, for the firſt time declined the juriſdiction of the juſtices; who repelled the objection, and decerned in terms of the libel. An appeal againſt this judgment was diſmiſſed by the quarter-ſeſſions. A bill of advocation being preſented, the lords advocated the cauſe, and remitted to the lord ordinary to proceed accordingly.

§ 4. THEIR JURISDICTION STRICTLY INTERPRETED.

The general principle, therefore, of their having no civi riſdiction, unleſs from particular ſtatutes, is eſtabliſhe concurring deciſions of the ſupreme court, and can nc be ſhaken by that conſuetudinary juriſdiction aſſume them in ſome places of the country, which naturally i duces the next chapter.

CHAP. IV.

Of the Civil Jurisdiction of the Sessions under the Small Debt Acts.

§ 1. SUMMARY MODES OF DECIDING SMALL CAUSES.

NO human code of law can be without imperfections. If it be commenſurate to the extended occaſions, and important buſineſs, of an opulent and flouriſhing community, it becomes, from the expence and difficulties of litigation, leſs adapted to the petty claims and controverſies that daily multiply, and neither ſafely nor juſtly can be overlooked.

Why neceſſary.

THIS appears even in the caſe of our neighbouring country; where both civil and criminal juriſprudence has been ſo carefully and ſucceſsfully cultivated. Yet there, "if "the debt exceeds 40s. the action may be brought in a ſu- "perior court, where, if conteſted or defended, the ex- "pence, at the loweſt computation, muſt be upwards of "50l. ſterling [a].

[a] Police of the Metropolis, by Mr. Colquhoun; who further ſtates, that "in the county of Middleſex alone, "in the year 1793, the number of "bailable writs, and executions for "debts, from 10l. to 20l. ſterling, "amounted to no leſs than 5719; "and the aggregate amount of debts "ſued for, was the ſum of 81,791l. "It will ſcarcely be credited," he adds, "although it is moſt unqueſ- "tionably true, that the mere coſts

§ I. SUMMARY MODES OF DECIDING SMALL CAUSES.

WE were no ſtrangers, in a certain degree, to the ſame inconvenience, which however affords no ſolid objection to the judicial eſtabliſhments of either country, but, leſs or more, muſt obtain, wherever, in the progreſs of affairs, and under the auſpices of conſtitutional liberty, law has grown into a ſyſtem, involving the ſtudy of ſtatutes and deciſions, and uſages; and is diſpenſed, according to fixed principles, by judges, who are prepared for their function by profeſſional habits and erudition. The very delays and difficulties, the dangers and expence of litigation, Monteſquieu ſcruples not to pronounce the price which each individual pays for the ſecure enjoyment of property and liberty [a]. They afford, then, no juſt ground of diſſatisfaction with, far leſs, of raſh innovations of, principles of law, and forms of procedure, which have been held ſacred and venerable for ages; which are fitted to the ſtate of ſociety among us; which have "grown with "our growth, and ſtrengthened with our ſtrength."

Tribuneaux de conciliation.

BUT they render it a wiſe and indiſpenſible meaſure of policy, to deviſe a particular remedy to the particular evil, by ſome leſs expenſive mode of ſummarily ſettling *petty diſputes*, by the equitable award of men of ſound ſenſe and integrity. Various expedients have been employed at different times for attaining this object. In Denmark,

"of theſe actions, although made up, "and not defended at all, would "amount to 68,72l. ſterling; and if "defended, the aggregate expence to "recover 81,7½l. ſterling, muſt be "(ſtrange," ſays he, "and incredible "as it may appear), no leſs than "285,005l. ſterling, being conſider-"ably more than three times the "amount of the debts purſued for." Chap xix, p. 584, &c.

[a] De l'eſprit des Loix. Liv. vi, c. 11. Si vous examinez les formalités de la juſtice, par rapport à la peine qu'a un citoyen à ſe faire rendre ſon bien, ou à obtenir ſatisfaction de quelque outrage, vous en trouverez ſans doute trop; ſi vous les regardez dans le rapport qu'elles ont avec la liberté et la ſureté des citoyens, vous en trouverez ſouvent trop peu; et vous verrez que les peines, les dépenſes, les longeurs, les dangers même de la juſtice, ſont le prix que chaque citoyen donne pour ſa liberté.

according to a late writer [a], litigation has been much diminiſhed in the ordinary courts; and much benefit has been experienced in conſequence of an inſtitution, introduced in the year 1795, which he terms *tribuneaux de conciliation*; conſiſting of a few men of integrity and intelligence in the neighbourhood, (but *les avocats* are not admitted among them) who, within the period of eight days in towns, and fifteen days in the country, determine cauſes at a ſmall expence, not to be paid unleſs both parties acquieſce in their determination; which then only has the force of a decree. Every citizen who, for the period of eight years, zealouſly diſcharges the duties of this office, obtains honourable marks of diſtinction. § 1. SUMMARY MODES OF DECIDING SMALL CAUSES.

JUSTICES of peace, in this country, have been but recently made inſtrumental by the legiſlature in promoting the ſame important purpoſes.

OLIVER CROMWELL, although he has obtained the credit of inſpiring the inſtitution of juſtices of peace in this country with freſh vigour, yet, in this particular, choſe to employ the different expedient of baronial courts; which he eſtabliſhed in each barony, for determining, by an aſſize, all "contracts, debts, promiſes, and treſpaſſes, whatſoever, "ariſing within the ſaid manor and precincts thereof; "provided that the matter in demand exceed not the value "of forty ſhillings; and that in any ſuch action or treſpaſs, "the freehold, or title of the lands, be not drawn into queſ-"tion [b]." This court was to be held every three weeks. This regulation, whether ever acted on or not, expired with its author. Baronial courts.

BUT juſtices of peace, though, as we ſaid above, not

[a] Tableau des Etats Danois, par Jean Pierre Cotteau, vol. i, chap. 5, page 296. The account of it taken from that writer, will be found in appendix, iii, No. 2.

[b] 1640, 3d Nov. Scobel's Acts.

§ 2. SUMMARY MODES OF DECIDING SMALL CAUSES.

veſted by their conſtitution with any civil juriſdiction, yet, in the county of Edinburgh, and ſome other places, had, paſt all memory, been in the practice of determining ſmall civil claims, not exceeding 40l. Scots, or 3l. 6s. 8d. ſterling. This, if not directly ſanctioned, was yet far from being diſcountenanced by the ſupreme court; ſuch appearing to be the ſtrong neceſſity of ſome remedy for the expence of litigation in the courts of common law, ſo oppreſſive in ſmall cauſes.

§ 2. CONSUETUDINARY CIVIL JURISDICTION.

II. As the reaſon of exerciſing this dubious juriſdiction was merely to avoid expence and delay, the procedure was quite ſummary. There was no libel; but merely a charge by a meſſenger to the defender to appear. "I "meſſenger, ſummon, warn, and charge you A B, to com- "pear before his majeſty's juſtices of peace, in "ſhire of Edinburgh, at Edinburgh, the day of "_____, in the hour of cauſe; to anſwer at the inſtance "of _____, with certification."

THE meſſenger's return bore the nature of the claim and ſum more ſpecifically.

"UPON the _____ day of _____, I J. R. "meſſenger, paſſed, and lawfully ſummoned, warned, and "charged A B to compear before his majeſty's juſtices of "the peace, within the ſhire of Edinburgh, on the "of _____, in the hour of cauſe, to anſwer at the in- "ſtance of J M, with certification. This I did, by deli- "vering," &c. There was no induciæ. The party was charged to appear the next day.

IN cauſes not exceeding *ten merks* Scots, (eleven ſhillings and one third of a penny ſterling) it was underſtood the defender was to appear perſonally. If he did not appear, he was held confeſſed, unleſs the citation had only been left at his dwelling-place; in which caſe a ſecond ci-

tation was neceſſary. If he did appear, a *viva voce* pleading took place. If a proof was neceſſary, he got till next court day to bring forward his witneſſes.

If he did not appear on ſuch ſecond citation, or on the firſt perſonal citation; or if he appeared, but made an unſucceſsful defence, then decree was pronounced againſt him, containing a warrant to poind his effects, or impriſon his perſon, if he did not pay the ſum contained in the decree. This warrant was not extracted for eight days; and the extract might be prevented, by lodging a petition with the clerk to the ordinary court; or if the decree was in abſence, the cauſe might ſtill be heard on payment of the previous expence.

If the decree was not brought under review within eight days from its date, it was extracted. No charge was given; but the conſtable or meſſenger having the extracted warrant in his hand, immediately proceeded to poind or impriſon; and, in like manner, when a reclaiming petition was refuſed, the extract might be taken out immediately.

In cauſes above ten merks, the procedure was ſomewhat different. In that caſe it was optional for the defender either to appear perſonally, or give in defences, ſigned by himſelf or his agent. Any perſon who had a houſe within the juriſdiction, and a mandate from the party, could act as agent. The debate was thus from the firſt ſometimes verbal and ſometimes written. The decree could not be extracted for eight days, and there was a charge to the defender to give obedience to the decree within fifteen days, under the penalty of poinding and arreſting.

In both caſes reclaiming petitions to the ordinary court were competent; but in caſes exceeding ten merks, extract could not go out till eight days after the refuſal of any ſuch

§ 2. CONSUETUDINARY CIVIL JURISDICTION.

petition. In both caſes an appeal was competent to the quarter-ſeſſions, on lodging a bond of *caution*, or ſecurity, for the ſum in diſpute, and expences.

EVEN in cauſes under ten merks, it was thus in the power of a litigious defender to have the proof, as well as the debate, in writing; to multiply petition after petition: and, after appealing to the quarter-ſeſſions, to force his antagoniſt into the court of ſeſſion. Many pounds have been thus incurred in recovering a few ſhillings.

§ 3. 35 GEO. III. THE FIRST SMALL DEBT ACT.

III. THE inconveniencies, as well as dubious legality, of this juriſdiction, and the benefits which it ſeemed to promiſe, under proper regulations, together with the example of the Engliſh courts of conſcience, ſuggeſted the idea of our firſt "ſmall debt act." Accordingly the ſtatute, 35th of the king, was paſſed by way of experiment, to endure for five years. And having been found, on trial, to produce the expected benefits, a perpetual ſtatute was paſſed, correcting the former, where it appeared to be defective; and extending the juriſdiction of the court from cauſes not exceeding 3l. 6s. 8d. ſterling, to thoſe not exceeding 5l. ſterling.

§ 4. GEO III, 39, AND 40, C. 46—THE SMALL DEBT ACT.

IV. IN explaining this ſtatute, it ſeems proper to inſert the words of the ſtatute itſelf; making upon each ſection ſuch remarks as appear to be neceſſary; and particularly noticing in what it differs from the former ſtatute, as well as the deciſions which have been pronounced by the ſupreme court upon both.

"*An act for the more eaſy and expeditious recovery of ſmall* "*debts, and determining ſmall cauſes, in that part of Great* "*Britain called Scotland.*—[30th May 1800.]

IN the title of the former act, 35 Geo. III, c. 123, the words *recovery of ſmall debts, and determining of ſmall cauſes,*

were followed with this qualification, "ariſing from perſonal "contract or obligation." See under, the ſecond ſection of this ſtatute. § 4. 39 AND 40 GEO. III.

"WHEREAS the regulations introduced by the act, made "in the thirty-fifth year of the reign of his preſent majeſ- "ty, *for the more eaſy and expeditious recovery of ſmall debts, "and determining ſmall cauſes ariſing out of perſonal contract or "obligation, in that part of Great Britain called Scotland*, and "which act is near expiring, having in general been found "uſeful and beneficial to the public, it is proper that they "ſhould be renewed and made perpetual, with ſuch amend- "ments as experience has ſuggeſted, and that other and "further regulations ſhould be made for attaining the ſame "ſalutary ends; may it therefore pleaſe your majeſty that it "may be enacted; and be it enacted by the king's moſt ex- "cellent majeſty, by and with the advice and conſent of the "lords ſpiritual and temporal, and commons, in this pre- "ſent parliament aſſembled, and by the authority of the "ſame, that all cauſes and complaints brought under the "authority of the ſaid act, and depending at the com- "mencement of this act, ſhall be carried on to a concluſion, "according to the rules thereby preſcribed, notwithſtanding "this preſent act." Preamble.

"II. AND be it enacted, that from and after the firſt day "of June one thouſand eight hundred, (which is hereby de- "clared to be the commencement of this act) it ſhall be "lawful and competent for any two or more of his majeſ- "ty's juſtices of peace in that part of Great Britain called "Scotland, within their reſpective counties or ſtewartries, "to hear, try, and determine, as ſhall appear to them agree- "able to equity and good conſcience, all cauſes and com- "plaints brought before them, concerning the recovery of "debts, or the making effectual any demand: provided al- "ways, that the debt or demand ſhall not exceed the value "of five pounds ſterling excluſive of coſts, and that in a

§ 4. 39 AND 40 GEO. III. "ſummary way, as more particularly herein after men-
"tioned."

THE words *it ſhall be competent and lawful* expreſs the peremptory will of the legiſlature that courts be held regularly in the different counties, in terms of this act; and by no means leave it in the option of the juſtices of peace to hold ſuch courts or not, as they may deem proper. Authority and powers are not conferred on magiſtrates and public officers for the ſake of themſelves individually, but of the community. *Powers* always infer correſponding *duties*. Under theſe words, then, the juſtices of each county are ſolemnly charged to form arrangements for holding regular courts under the ſmall debt act. Nothing can more directly tend to counteract and fruſtrate the benign views of the legiſlature in framing this act; nothing can be more vexatious and injurious to that claſs of perſons for whoſe behoof it was principally intended, than irregularity in holding the courts; and, after parties are aſſembled, adjournments for want of a *quorum*. The ſtatute muſt do harm, rather than good, without ſcrupulous attention to this matter.

THE words, *equity and a good conſcience*[a], it is of great importance, correctly, to underſtand; that, on the one hand, inexperience in the doctrines and procedure of courts of law, may not deter gentlemen of ſound judgment and integrity from undertaking this honourable and uſeful duty; while, on the other hand, nothing can more directly tend to bring the inſtitution into diſcredit and neglect, than any idea that the judges, under the ſmall debt act, are not under the ſame obligation with other judges to decide queſtions of fact according to the proof of the fact; and queſtions of relevancy or law, according to the nature of the right.

a A phraſe derived from the ſmall debt act of the city of London. 3 J. I, cap. 15.

They are to "try, hear, and determine" "*cauſes* and *complaints*, "concerning the recovery of debts, or the making effectual "any *demand* that ſhall not exceed," &c. But every "cauſe," "complaint," or "demand," muſt involve ſome controverſy touching either the fact or the law. And this act ſubjects to this new judicature thoſe of a certain deſcription, viz. not exceeding 5l. ſterling; which "demands, cauſes, "or complaints," before the erection of this judicature, were (and but for it would ſtill be) decided by the judge ordinary. But though they are decided more cheaply and expeditiouſly, more ſuitably to the ſmallneſs of the cauſe, as well as beneficially for all concerned, ſtill the thing to be decided, whether by this court, or by the judge ordinary, cannot be different; it muſt be either a matter of fact, or a point of right. In either caſe, this act intruſts to private gentlemen, although they may not be *learned in the law*, the power of deciding the cauſe according to the beſt of their knowledge and conviction, upon attentively conſidering the circumſtances of the caſe. § 4. 39 AND 40 GEO. III.

BUT theſe words, "equity and a good conſcience," do not authoriſe them to decide contrary to the law, or contrary to the proof of the fact, from ideas of abſtract equity; as the ſuppoſed inhumanity of a legal demand, or conſiderations ariſing from the relative ſituation of parties; one of whom may be rich, and the other poor, but who have an equal right to the aid and protection of the law. Whether the creditor acts harſhly or commendably in making his demand for full payment; whether the deciding one way or another would be *a great advantage* to the one party, and *a trifling inconvenience* to the other; theſe, and ſuch like, are inquiries which the words alluded to give juſtices of peace no title to enter into, and which are proper only for the private individual in directing his own conduct. Although it was a celebrated maxim of the ancient moraliſts, not to purſue a ſmaller good to one's ſelf, at the expence of a greater evil to others; or, as improved in ſcripture, to behave to others, as we would wiſh others to

§ 4. 39 AND 40 GEO. III.

behave to us; yet ſuch balancing of the circumſtances and morality of two litigants, belongs not to the judge deciding with regard to the *rights* of *others*. Whether the proſecution on the one hand, or the defence on the other, be gentlemanlike, grateful, commendable, or the contrary, cannot enter into view in the deciſion, which muſt ſolely depend (as the caſe may be), either upon the proof of the fact, or the real merits of the point of right.

ACCORDINGLY, the lords of council and ſeſſion themſelves arrogate no ſuch diſcretionary or arbitrary power, although they be entruſted with the higheſt equitable juriſdiction, and are ſaid to poſſeſs a *nobile officium*; which, ill underſtood, provoked the acrimonious animadverſion of two diſtinguiſhed names in our literary annals [a]. Thus, in a late inſtance, a woman, was married to a man who ſoon after became inſolvent. His creditors had the benefit of her fortune; ſhe wiſhed to retain a cheſt of drawers, bed-clothes, table linen, and other articles, as *paraphernalia* [b]; and as this was giving that word a more extenſive application than ſtrict law warranted, ſhe expreſsly threw herſelf upon the equitable powers, and the ſuppoſed *nobile officium* of the court. But it was obſerved from the chair, that though the caſe was hard, and the creditors appeared not to be acting a very li-

[a] Buchan. Rer. Scot. Hiſt. lib. 14, p. 467, ed. 8vo.

Dr. Stuart's Public Law and Conſtitutional Hiſtory of Scotland, note XIX.

[b] Paraphernalia (from the Greek παρα and φερνη) in the civil law meant every thing belonging to the wife, *præter dotem*. Ulpian in *l.* ix, § 2, *ff. De jure dot.* In our law it means thoſe moveables which continue the property of the wife after marriage; including the whole *veſtitus*, or *mundus muliebris*; which means "not only "the body cloths and wearing appa- "rel, but all the ornaments of dreſs "proper to a woman's perſon; as "neckcloth, earrings, breaſt or arm "jewels, given by her huſband or "her either before or after marriage. "But things of promiſcuous uſe to "man and wife, *ex. gr.* watch, jewels, "medals, plate, and even the repoſi- "tories for holding *paraphernalia*, are "not paraphernal, unleſs they be "made ſuch by the bridegroom "giving them to the bride *before* and "*on* the marriage-day." Erſk. b. 1. tit. 6, § 15.

§ 4. 39 AND 40 GEO. III.

beral or commendable part, yet that was a matter which refted entirely in their own diſcretion, as the court had no power to give away the property of litigants, or to be liberal at the expence of others [a]. If the ſupreme tribunal itſelf, the grand jury of the nation, be thus limited in the determination of private cauſes, it will not appear very probable that it could be intended to give the ſmall debt court a more *arbitrary* power, which would be no leſs painful to the judge than unſafe to the lieges, and become the fruitful parent of animoſity, diſcontent, and of evils more than ſufficient to counterbalance any inconveniences it could prevent. Such a power, or latitude, of going beyond the cauſe in deciding it, an eminent judge and celebrated writer calls "that moſt tremendous and moſt "dangerous power, the diſcretion of the judge [b];" and a late chief juſtice of England has deſcribed it as the law of "tyrants; always unknown; different in different men. It "is caſual, and depends upon conſtitution, temper, and "paſſion. In the beſt it is often caprice; in the worſt it is "every vice, folly and paſſion, to which human nature is "liable [c]." "Diſcretion" (obſerves another learned judge) "the only ſenſe in which it can properly belong to judges, "is a ſcience and underſtanding of diſtinguiſhing and diſ-"cerning between falſehood and truth, &c. and not to do "according to arbitrary will and private affection [d]."

THESE words, then, cannot lead us to imagine that the framers of this moſt excellent ſtatute intended to erect a petty tyranny in each diſtrict. They were meant merely to ſignify the ſummary procedure of this judicature; its freedom from the trammels and forms and review which make litigation ſo tedious and expenſive in courts of law; and in particular, certain equitable and extraordinary

[a] 1803, Nov. 24, Beatrix Hewat.

[b] Sir William Jones' Law of Bailments, p. 25.

[c] Lord Cambden's Argument in the caſe Doe v. Kerſey; Morgan's Law of Evidence, p. 284. See alſo judge Blackſtone, v. iii, p. 429, &c.

[d] Ibid. 5, Co. 100. A. Rooke's caſe.

§ 4. 32 AND 40 GEO. III.

powers, which the act itself confers upon them with the most salutary consequences; as, for example, where circumstances require it, to make the sum awarded payable by instalments; of which more fully afterwards.

PERHAPS, also, those words may give them some latitude in the matter of evidence, freeing them from the necessity of scrupulous attention to nice objections, in point of law, to the evidence produced, whether witnesses or writs; provided only, under a general view of the whole, they are convinced, as jurymen or arbiters, of the truth of the fact in controversy before them.

BUT this discretionary power, (if it at all obtain) even in matters of evidence, must not be carried far. Thus, for example, an action is brought for payment of an account more than three years after the date of the last article in it. Though the short prescriptions are not extinctions of the debt, strictly speaking, but of the mode of proof only, yet they are so generally known, and firmly established, and indispensible to the preventing of fraud and imposition, particularly in small causes, that the justices would not think themselves at liberty, more than the judge ordinary, to allow a general proof of a prescribed debt, instead of requiring it to be proved by the defender's writ or oath. Neither, perhaps, would they be warranted in resting solely upon the testimony of one witness; our law reposing confidence only in the concurring evidence of two witnesses. Unless, therefore, in some of those cases in which British statutes have required credit to be given to one witness, perhaps justice of peace ought not to dispense with so established a maxim of our law of evidence. Be this however as it may, it is certain, that nothing whatever can enter into the judgment of the small debt court in deciding a cause, but the point in controversy; be it a matter of fact in questions of fact, or a matter of right in questions of law.

§ 4. 39 AND 40 GEO. III.

THESE words, "*all cauſes and complaints brought before them* "*concerning the recovery of debts, or the making effectual any* "*demand,*" were followed in the former act by the farther deſcription, "ariſing out of perſonal contract or obligation;" which words were omitted, as ſeeming to imply a more limited conſtruction of the ſtatute than appeared to be expedient or neceſſery. Under the preſent act, therefore, all actions whatever, not ſpecially excepted, and not exceeding the ſtatutable ſum, are competent before the ſmall debt court. The ſupreme court have pronounced ſome deciſions which it may be proper here to mention.

THE treaſurer of the poor for the pariſh of Avondale brought an action againſt the miniſter of that pariſh before a ſeſſion of the juſtices of peace, held under the 35 George III, concluding for 3l. 6s. 8d. as the proportion alleged to belong to the poor of the pariſh of the money ariſing from the proclamation of banns of marriage, and regiſtration of births, from Martinmas 1794 till Whitſunday 1795, with 6s. ſterling of expences of proceſs. The juſtices pronounced decree for payment, in terms of the libel. In a bill of ſuſpenſion, the defender pleaded, that the juſt conſtruction of the ſtatute embraced only ſmall cauſes ariſing from bargains, accounts, wages, &c. By the charger, it was ſaid to comprehend all caſes whatever, which reſolve into a queſtion of debt, or into a perſonal obligation to pay a ſum of money, or which are of a declaratory nature. The late lord Swinton, who is ſaid to have had the merit of firſt ſuggeſting the Scottiſh ſmall debt act, expreſſed himſelf very clearly of opinion that this caſe did not fall under it; but the court was of a different opinion. The letters of courſe were found *orderly proceeded*[a].

THE preſent act, which purpoſely omits the diſputed words, clearly comprehends all cauſes whatever not exceed-

[a] Thomas Hamilton againſt the rev. John Scott, 1797, Dec. 5. Fac. Coll.

§ 4. 39 AND 40 GEO. III.

ing 5l. ſterling, and not ſpecially excepted. This was th opinion of the ſupreme court, in the caſe of a decree of th juſtices for 2l. 1s. 8d. ſterling; which was brought unde review by reduction, and was ſtated to have proceeded o the footing, not that the defender owed the debt himſelf, bu that he was liable for it as a debt of his father and mother having intromitted with their effects. Some of the judge viewing it as a queſtion of *paſſive titles*, and tending to fi upon the party a general repreſentation of his father, ex preſſed doubts whether it fell under the deſcription of cauſe included in the act. But the court in general did not ente into this idea; which appeared too much to narrow and limi the ſtatute, as ſcarcely a caſe could occur which might no be ſaid to involve a point of law. Their lordſhips repelled th reaſons of reduction [a].

THE court were of the ſame opinion in the ſtill mor doubtful caſe, of a libel brought before the juſtices of peac for the county of Stirling; ſtating, that "the defender w "juſtly addebted, and reſting owing to the complainer th "ſum of 5l. 19s. 6d. ſterling, which is hereby reſtricted "5l. *of damages, for fraudulently taking up money, and allow* "*ing another meſſenger to do the ſame*, in the cauſe of law "burrows, and keeping up bond of caution; by whic "means the complainer's wife, Janet Turnbull, was com "mitted to priſon, when in a bad ſtate of health." An the libel concludes for the ſaid ſum, with intereſt and e pences. The juſtices gave decree againſt him for 3l. The d fender pleaded, in a bill of advocation, that the libel, co taining a charge of fraud, and impropriety of conduct in h official capacity, involved a queſtion of more importan than could competently be determined by the juſtices und the ſmall debt act. But their lordſhips refuſed the bill advocation; in reſpect the fraud was not judged of to a other effect than ordering reſtitution of the money which alo was concluded for [b].

[a] Johnſton againſt Kellow, 1803, Jan. 19.

[b] John Brown againſt Laurence Turnbull. February, 1801.

PROVIDED the debts or demand ſhall not exceed the value of five pounds ſterling, excluſive of coſts, the former act limited the ſum to 40l. Scots, or 3l. 6s. 8d. The advantages found to reſult from the firſt act, induced the legiſlature in the preſent act to extend the ſums [a]. § 4. 39 AND 40 GEO. III.

BUT the cauſe muſt not exceed the ſum ſpecified in the act. It is not competent to divide the ſum in diſpute for the purpoſe of raiſing ſeveral actions before the juſtices. Such an attempt was ſtrongly reprobated in a caſe that fell under the former act [b]. Within a period of no more than 13 years, about 40 ſmall feus had been granted upon the eſtates of the counteſs of Loudon for feu-duties of 8s. or 9s. a-year. In the bargain it had not been mentioned whether the expence of the feu-rights was to be paid by the ſuperior or vaſſal, or by both of them. The feuars had long demanded their feu-rights. The factor at length aſſembled them together, and preſented to them, not only feu-diſpoſitions, but ſeiſines taken thereon, which he refuſed to deliver, unleſs they paid him the expence of the charters and infeftments. This the feuars refuſed, alleging they had given no orders to take the infeftments. Separate actions were brought before the juſtices againſt each of the feuars at the inſtance

[a] Mr. Colquhoun propoſes that the juſtices of peace of the county of Middleſex ſhould be empowered finally to determine cauſes to the extent of 50l. ſterling. "If, inſtead of the "various inferior courts for the re"covery of debts (excluſive of the "courts of conſcience) which are of "very limited uſe, on account of ap"peals lying in all actions above 5l. "ſterling—the juſtices, in the gene"ral ſeſſions of the peace, *ſpecially* "*commiſſioned*, were to hear and determine, *finally by a jury*, all actions "of debt under 50l. and to tax the "coſts in proportion to the amount "of the verdict great benefits would "reſult to the public." Ibid. p. 587. The author is here ſpeaking of what would be proper for London; but whatever may be the juſtice of the remark, it is plain that in this country the ſum could not at preſent, with propriety, be raiſed above 5l. ſterling.

[b] 20th December, 1799; John Anderſon and others feuars in Dalvil.

§ 4. 39 AND 40 GEO. III. both of the writer to the ſignet and of the country agent; the one for the expence of the feu-diſpoſitions, and the other for that of the ſeiſines. The juſtices, in terms of the ſeveral libels, pronounced decree againſt the feuars, who offered a bill of advocation, or ſuſpenſion, praying "for *letters of advocation*, in "caſe of no extract, and that the ſame ſhall be judged com-"petent by your lordſhips, where a general point of im-"portance, more than a ſum of money, is in queſtion; or "otherways, upon *letters of ſuſpenſion on caution* in common "form." Lord Stonefield, ordinary, *refuſed the bill.* But on adviſing a reclaiming petition, with anſwers, the court *paſſed the bill as an advocation* without a diſſenting voice.

OBSERVED "on the bench.—The two claims, viz. mak-"ing out the diſpoſition and infeftment thereon, could not "be disjoined. Two perſons, it is alleged, were employed "under the counteſs. It makes no difference whether two "or a dozen were employed; it was in one buſineſs; the "factor wiſhing to recover payment for both eaſily, acts for "both ſeparately in each of their names. This was mak-"ing an unfair uſe of the act of parliament."

THIS caſe was determined under the former act; but the ſame principle applies under the preſent; and it ſeems proper to mention it, as the court conſidered it as a caſe of importance.

IT was farther mentioned from the bench, that the *ſmall debt act* was not intended to regulate queſtions relative to feudal rights, but only ſmall queſtions of debt. Even this ground alſo applies to the preſent act, though omitting the words perſonal obligation or contract; and, as we have ſeen underſtood by the court, to extend to all caſes not included within the ſpecial exceptions, which laſt however include all caſes of heritable rights.

§ 40
39 AND 40 GEO. III.

"III. AND be it enacted, that all ſuch cauſes ſhall pro-
"ceed upon petition [a] or complaint, ſtating ſhortly the cauſe
"or ground of action, and concluding againſt the defend-
"er; which petition or complaint being ſigned by the juſ-
"tice of peace clerk, or any deputy by him appointed, or
"in caſe of his failing to appoint, by a clerk to be appoint-
"ed within the reſpective diſtricts, as herein after mention-
"ed, ſhall be a warrant for any conſtable or peace officer
"for ſummoning the defender to appear and anſwer at the
"next meeting of the juſtices of peace in the diſtrict of
"the county or ſtewartry where the defender reſides, the
"ſame not being ſooner than upon the ſixth day after the
"date of the citation, and alſo for ſummoning witneſſes to
"the ſame day and place: provided always, that a copy of the
"ſaid petition or complaint, with the citation annexed, and
"alſo a copy of the account, document of debt, or ſtate of
"the demand, with the names of the witneſſes, or other
"means of proof, ſhall be delivered by a conſtable or peace
"officer to the defender perſonally, or at his dwelling-houſe
"or place of abode; in which laſt caſe, if the defender
"ſhall not appear, he ſhall be cited a ſecond time perſonal-
"ly, or at his dwelling-houſe or place of abode, upon the
"words *de novo* being either ſubjoined to the original peti-
"tion, and ſigned by any one juſtice of the peace, or writ-
"ten in the procedure-book kept by the clerk, and ſigned
"by the juſtices, to appear either at the next ſtated meet-
"ing, or at a meeting to be held by adjournment for that
"purpoſe, and fixed by the juſtices at the firſt diet, which
"ſecond meeting ſhall not be ſooner than three days from
"the date of the firſt, or, in default, to be held as confeſſing
"the debt or juſtice of the demand; and the conſtable or
"peace officer ſhall, in both caſes, return an execution of
"citation ſigned by him, or ſhall appear and give evidence
"upon oath of his having duly cited the defender in man-

[a] For theſe ſee appendix.

§ 4. 39 AND 40 GEO. III. " ner aforeſaid: provided nevertheleſs, that if the defe " ſhall appear at any time before ſuch ſecond citation, " the parties and witneſſes ſhall be then ready, the juſ " may proceed to hear and determine the cauſe."

" ALL ſuch cauſes ſhall proceed upon *petition* or " *plaint*, ſtating," &c. The libel or complaint ought to enter into any detail, but merely mention the gr of action, and the concluſion, that the ſame may be foundation for a decree; the intention of the ſtatut ing, that the defence, and all information concerning cumſtances, and all facts and arguments on both ſide to be ſtated verbally in the preſence of the court: for example, in an action brought by a merchant for ment of an account, the complaint ought only to ſp the ſum due, and refer to the account, a copy of w ought to be ſerved on the defendant, and the accou ſelf lodged with the claim, or produced in court at ca the cauſe. But the complaint ought to enter into no p culars; ſuch as communings between the parties, or neſs of the prices, or ingratitude of the defender, but ly that ſuch a ſum is owing. It may be made out in th lowing form.

" UNTO the honourable his majeſty's juſtices of peac " the ſhire complains " that where is juſtly ad " ed, reſting, and owing, the complainer the ſum of " which he refuſes to pay, unleſs compe " therefore the ſaid ought and ſh " be decerned and ordained to make payment to the " plainer of the aforeſaid ſum, with expences."

" WHICH petition or complaint being ſigned, &c. " be a warrant for any conſt. or peace officer for " ming the defender to appear."

THE forms of the warrant and citation, both with reſpect to the defender and witneſſes, will be found in appendix II. § 4. 39 AND 40 GEO. III.

" To appear at the next meeting of, &c. *the ſame not being ſooner than the ſixth day after the date of citation.*

IN the former act the expreſſion was " the ſame not being ſooner *than ſix days* after the date of citation." This was underſtood to exclude both the day of *citation* and the day of *compearance*, which made it neceſſary for all *warrants* given out on the *Monday* to be executed *that day*, though the conſtable was attending the court to *verify* his execution on oath, in terms of the act, if thought neceſſary, otherways they could not come into court for a fortnight thereafter, which occaſioned much inconveniency. The preſent act therefore uſes the words *not ſooner than the ſixth day*; thus ſaving a week to the parties, who are leſs apt to be inactual when too long a period intervenes between the day of citation and the day of compearance.

THAT a copy of the ſaid petition or complaint, with the citation annexed, and alſo a copy of the account, document of debt, or date of the demand, with the names of the witneſſes, or other means of proof, ſhall," &c. Theſe words were inſerted to remedy the delay which had been experienced under the former act, from the defender not knowing, or pretending not to know, the nature of the claim till explained in court.

" *HE ſhall be cited a ſecond time perſonally, or at his dwelling-houſe, &c. upon the words de novo,*" &c.

THE former act, where the firſt citation was not given perſonally, required the ſecond to be upon *a new warrant* or order, ſubjoined to the original petition, and ſigned by *one* juſtice of peace. But the preſent act adopts the ſimpler plan of granting the warrant *de novo*,

§ 4. 39 AND 40 GEO. III. "*PROVIDED neverthelefs, that if the defender ſhall appear at any time before the ſecond citation,*" &c. This proviſion was not in the former act.

"IV. AND be it enacted, that the original warrant, ſigned by the juſtice of peace clerk, or his deputy, ſhall contain an authority to the officer to ſummon witneſſes, not only for the purſuer, but alſo for the defender, if the officer ſhall at any time, before the diet of appearance, be required by the defender to cite ſuch witneſſes."

THESE forms will be found in Appendix II.

"V. AND be it enacted, that if the witneſſes cited, either upon the one part or the other, do not appear at the time and place to which they are cited, it ſhall be competent to the party or parties to apply for a new warrant for compelling them to attend at the next ſtated or adjourned meeting, which warrant may be ſigned by any one juſtice of the peace, and may require them to attend in order to give evidence, under a penalty not exceeding twenty ſhillings ſterling, to be awarded by the juſtice of peace in default of their appearance, unleſs a reaſonable excuſe be offered and ſuſtained, and to be recovered by the party at whoſe inſtance they were cited, in the ſame form and manner as is herein directed with regard to other ſmall debts, or, in the option of the juſtice of peace to be impriſoned for a certain time in the county priſon not exceeding ten days.

"VI. AND be it enacted, that when the parties ſhall appear, the ſaid juſtices ſhall hear them *viva voce*, and examine witneſſes upon oath, and alſo the parties by declaration or upon oath: provided always, that no procurators, ſolicitors, or any perſons practiſing the law, ſhall be

"allowed to plead for them, either *viva voce* or by writing, nor ſhall any of the pleadings, or minutes, or evidence, be taken down in writing, or be entered upon any record." 39 AND 40 GEO. III. § 4.

"*ALSO the parties by declaration or upon oath.*" In the former act here followed, "proceeding on the reference of either party."

AND alſo the parties by declaration or upon oath. This clauſe impoſes upon juſtices of peace a delicate and important duty, and affords them an opportunity either of preventing or occaſioning much evil. Good men have ever been averſe to ſwear, unleſs on important occaſions. Grotius mentions, with approbation, the encomium of the orator Libanius, upon a worthy character, that ſuch was his abhorrence of perjury, that he dreaded even to take an oath [a]. "To ſwear about trifling matters, or without any cauſe, is very impious; as it plainly tends to abate that awful reverence which all good men ſhould conſtantly maintain towards God [b]." Hence it has been remarked, that "where perjuries in ſerious matters grow frequent in any ſtate, *the legiſlators or the magiſtrates are generally chargeable with much of the guilt;* if they either frequently exact oaths in ſmaller matters, or when oaths give no ſecurity in the point of view; or if oaths are required where there are great temptations to perjury, with hopes of impunity [c]." But, in the preſent caſe, much of the ſame guilt will attach to thoſe juſtices of peace who raſhly and precipitately admit litigants, to terminate the cauſe by their oath, when very poſſibly a little patience and temper, addreſs and attention, might have better diſcovered the truth, without employing that dangerous and diſagreeable expe-

[a] De Jure Belli et Pacis, lib. ii, cap. 13, § 21. Ἐπιορκίας τοιοῦτον, ὅτι καὶ πρὸς τὰς ὑποσχέσεις ἴσχυν ἀπέβαλε.

[b] Dr. Hutcheſon's Elem. of Ethics, b. ii, c. 2, § 1.

[c] Ibid.

§ 4. 39 AND 40 GEO. III.

dient; which ought to be the laſt in every caſe, but particularly where the litigants are generally of the lower orders of ſociety. The juſtices, who have had much experience in the execution of this act, have frequently found that defenders, who at firſt not only denied the debt, but offered to ſwear that it was not due, have been brought to acknowledge it, by a little inveſtigation into the nature of the claim, refreſhing the memory, giving aſſurances of indulgence, by inſtalments, &c.; whereas leſs patience in the judge, admitting the oath when it was offered, would have had the effect of defrauding the one party of a juſt debt, and involving the other in the diſgrace and guilt of perjury.

"*PROVIDED always, that no procurator, ſolicitor, or any "perſons practiſing the law, ſhall be allowed to plead for "them.*" When claims are brought, not by the original creditors, but by other perſons to whom they have been aſſigned, much caution is neceſſary, eſpecially if the purſuer be a legal practitioner; leſt the debt may have been colluſively made over for the very purpoſe of defeating this clauſe, which requires parties to appear perſonally, without the aid of any legal practitioner.

"*NOR ſhall any pleadings, or minutes, or evidence, be taken "down in writing, or entered on any record.*" In a late caſe brought before the court of ſeſſion by reduction, it appeared the clerk had taken down the evidence in writing. Their lordſhips ſo much diſapproved of his conduct, that they ſpoke of inflicting a fine upon him [a].

"VII. AND be it enacted, that if the defender who has "been perſonally cited, or who has been cited a ſecond "time on default for non-appearance on the firſt citation, "ſhall not appear by himſelf or by one of his family, and

[a] 1803, January; Alexander Stewart.

"ſhall not ſend an excuſe to ſatisfy the juſtices to give him "a delay, he ſhall be held as confeſſing the debt or juſtice "of the demand; but if a ſufficient excuſe ſhall happen "to be made, or if the abſence of witneſſes, or any other "good reaſon aſſigned, ſhall move the juſtices to adjourn "the meeting to another day, or to the next ſtated time of "meeting, it ſhall be competent for them to make ſuch ad- "journment, and the parties and witneſſes ſhall be ordered "then to attend." § 3. 39 AND 40 GEO. III.

Or by one of his family.

THESE words were not inſerted in the firſt act. As it ſometimes happened that the huſband or father, who had to work for the ſubſiſtence of the family, could not conveniently attend the preſent act, allows any other member of the family to appear inſtead of him.

Or any other good reaſon aſſigned.

IT is not without ſome very good reaſon aſſigned, that the court is to be delayed from one day to another, but each day's roll ought to be determined, if poſſible, at one *ſederunt*; as the loſs of time, beſides the injury to the community, is a very ſerious evil to perſons in the lower ranks of life, for whoſe benefit this act was principally intended.

"VIII. AND be it enacted, that where a decree has gone "in abſence or by default, it ſhall be ſtill competent for the "defendant, upon conſigning the ſums decreed for in the "clerk's hands, and making intimation of this to the pur- "ſuer perſonally, or by two citations at his dwelling-houſe "or place of abode, at any time before the days of the "charge elapſe, to have the matter re-heard at the follow- "ing court-day; and, in like manner, where abſolvitor has "paſſed in abſence, it ſhall be competent for the purſuer,

§ 4. 39 AND 40 GEO. III. " upon conſigning two ſhillings and ſixpence in the hand
" of the clerk, and giving the like notice to the other party
" to have the cauſe again called at the next court-day, the
" two ſhillings and ſixpence being paid over to the defender
" in order to defray his previous expence."

THE firſt act did not contain this regulation.

" IX. AND be it enacted, that in caſe it ſhall be proved,
" to the ſatisfaction of the juſtices, that the non-attendance
" of parties or witneſſes has been occaſioned by any failure
" of duty on the part of the officer, and that he has return-
" ed a falſe execution, it ſhall be in the power of the ſaid
" juſtices to puniſh him, by a fine to the poor, or impriſon-
" ment, the fine not exceeding twenty ſhillings ſterling, nor
" the impriſonment not exceeding ten days."

" X. AND be it enacted, that the clerk or depute-clerk
" ſhall keep a book, wherein ſhall be entered a tranſcript of
" the petition or complaint, with the date of giving it in
" the ſeveral deliverances or interlocutory orders of the juſ-
" tices, and the final judgment or decree, with the date
" thereof, which laſt ſhall be ſigned by the juſtices preſent,
" or by their preſes, if more than two are preſent; and a
" copy of the ſaid decree ſhall by the clerk be annexed to
" the principal petition or complaint, containing warrant
" for arreſting or poinding the effects of the defender, or
" for committing his perſon to priſon; which copy or ex-
" tract, being ſigned by the clerk or his deputy, and deli-
" vered to the party in whoſe favour the ſame is granted,
" ſhall be a warrant for execution, after the expiration of ſix
" free days from the date of pronouncing the decree, if the
" party againſt whom it is given has been preſent in court
" when it was pronounced, or if he has not been preſent,
" execution ſhall only proceed after a charge of ſix free

"days given by the officer, by leaving a copy of the decree "or judgment againſt the party either perſonally, or at his "dwelling-houſe, to which charge the officer ſhall make "oath, if required." 39 AND 40 GEO. III. § 4.

"*SIGNED by the juſtices preſent, or by their preſes, if more "than two are preſent.*"

IN the caſe of Scott againſt Hamilton, quoted above, it was objected, that though the decree was pronounced by two juſtices, yet it was ſubſcribed by one only, and by him not as *preſes*. The charger contended, that it was the book kept by the clerk, and the principal decree inſerted in that book, which muſt be ſigned by two juſtices; and that an extract, or copy of the decree, ſigned by the clerk or his deputy, without the ſignature of any of the juſtices preſent, is a ſufficient warrant for carrying the decree into execution. It was alſo ſaid that though the act requires the book to be ſigned by two juſtices, where no more than two are preſent, its being ſigned only by the preſes is declared not to be a nullity. The court appear not to have regarded this objection.

WARRANT for arreſting and poinding.—Theſe forms will be found in Appendix II.

"XI. AND be it enacted, that the form of the poinding "ſhall be ſummary; *videlicet*, by carrying the effects poind-"ed to the neareſt market town, or kirk town, or village, "within the pariſh, and, after getting the ſame duly appriz-"ed, ſelling them between the hours of eleven and twelve "forenoon, at the croſs or moſt public place, after one "hour's notice given by a crier, by public roup, to the high-"eſt bidder, returning the overplus (if any) to the owner, "after deducting what is allowed by this act for poinding "and ſale; and if the effects are not ſold, delivering them "over at the appraiſed value to the creditor, to the amount

§ 4. 39 AND 40 GEO. III. " of the debt and the allowance for poinding: provided al-
" ways, that in caſe the place of ſale is not a market town,
" but only a kirk town or village, the place and time of ſale
" ſhall be advertiſed two days at leaſt before the day of ſale,
" at the door of the pariſh church upon Sunday after the
" forenoon ſermon."

THE forms uſed in poinding will be explained in the chapter concerning Conſtables.

" XII. AND be it enacted, that the ſaid juſtices may, if
" they think proper, direct the ſum or ſums found due to be
" repaid by inſtalments, weekly or monthly, according to
" the circumſtances of the parties found liable, and under
" ſuch conditions or qualifications as they ſhall think fit to
" annex."

THE wiſdom and humanity of this ſtatute is nowhere more conſpicuous than in the proviſion with reſpect to paying the ſums found due by inſtalments. Defenders have often no other defence than their inability to pay the debt. But when it muſt be taken in ſmall moities, to anſwer weekly wages, they pay cheerfully and punctually ſums which could not be obtained from them at once without their utter ruin.

BUT this indulgence ought not to be abuſed. Each moiety ought to be religiouſly paid when due. The ſtatute therefore allows the juſtices to annex what qualifications they think proper to their decree; for example, where they think it neceſſary, they may declare, that in caſe one moiety lie over till the ſecond become due, or the ſecond till the third, the party ſhall be at full liberty to do diligence for the whole ſum and expences contained in the decree.

" XIII. AND be it further enacted, that the decree given

"by the ſaid juſtices ſhall not be ſubject to advocation, nor "to any ſuſpenſion, appeal, or other ſtay of execution; and "in caſe either party ſhall afterwards inſiſt in an action of "reduction before the court of ſeſſion, for ſetting aſide the "proceedings on the ground of alleged iniquity or oppreſ- "ſion, he ſhall, before he be heard in ſuch action, be obli- "ged to find ſufficient caution, and to lodge the ſame in "the hands of the clerk of court, for payment of ſuch ex- "pences as may be awarded againſt him; nor ſhall any ſuch "action be at all competent after the expiration of one year "from the date of the decree of the ſaid juſtices." §. 4. 39 AND 40 GEO. III.

SHALL not be ſubject to advocation, nor to any ſuſpenſion, appeal, or other ſtay of execution.

THE decree pronounced is not ſubject to ſuſpenſion or advocation, unleſs in the caſe of an exceſs of power, viz. juſtices judging in matters not ſubjected to their cognizance. In ſuch a caſe the court afford redreſs, though applied for in the form of *advocation* or *ſuſpenſion;* as accordingly they did in the caſe of the feuars, quoted above, where the bill was paſſed as an *advocation.* For this they muſt have done, even had the act declared the judgment of the juſtices not reviewable at all. If the juſtices exerciſing this ſtatutable juriſdiction go beyond the powers committed to them, the lieges are entitled to apply, in common form, to the ſupreme courts for protection.

IN caſe either party ſhall afterwards inſiſt in an action of reduction, he ſhall, &c.

IN order the more fully to obtain the beneficial effects of this act, it was originally propoſed that the decree of the juſtices ſhould not be reviewable at all on the head of iniquity; but it was ultimately judged better and more conſtitutional not to ſhut the door altogether againſt redreſs; at

§ 4. 39 AND 40 GEO. III. the ſame time to preſcribe ſuch a mode as would not be reſorted to without ſubſtantial grounds. This object accordingly is, as far as poſſible, attained by the preſent ſection. For few perſons, it may be preſumed, will think of employing the expenſive proceſs of reduction, unleſs in a caſe of palpable iniquity; and, at any rate, the wiſe precaution of requiring caution for the expences, ſecures the other party from all riſk of loſs.

NOR ſhall any ſuch action be at all competent after the expiration of one year from the date of the decree. This was neceſſary. The ſtatute prohibits the juſtices either to keep a record of their proceedings, or to take any evidence in writing. The reduction therefore becomes neceſſarily a new cauſe. The party makes his allegation, obtains a new proof, examines what witneſſes he pleaſes, and the ſupreme court determine the merits as they *then* appear, rather than the merits of the decreet of the juſtices, according to the ſtatement and evidence that may have been laid before them. Had any longer period been ſuffered to elapſe, important witneſſes might be dead, or out of the way, ſo that the reduction might be determined on quite different evidence from the original decreet. In order, as far as poſſible, to prevent this hardſhip and inconveniency, the ſtatute limits the time for raiſing the reduction to a twelvemonth. Even in this ſhort time no doubt, in ſome caſes, important alterations may happen from the death of witneſſes, &c. But every particular hardſhip cannot be remedied or prevented. It is ſufficient that the ſhort period of a twelvemonth affords the leaſt poſſible riſk of ſuch inconveniencies.

" XIX. AND be it enacted, that no privilege ſhall be al-
" lowed to exempt any perſon liable to be ſummoned by
" virtue of this act, from the juriſdiction of the ſaid juſti-
" ces, on account of his being a member of any other court
" of juſtice."

UNDER the former act, which contained no ſuch limitation, ſome caſes occurred of members of the college of juſtice pleading their privilege; and though the court repelled the declinature, it was judged proper to put the matter beyond doubt by this ſection. § 4. 39 AND 40 GEO. III.

"XX. PROVIDED always, and be it enacted, that this act, "or any thing herein contained, ſhall not extend to any "debt for rent, upon a tack, or leaſe, or real contract, "where the title of any lands, tenements, or hereditaments, "can or may come to be brought in queſtion, nor to any "other debt, matter, or thing, that ſhall or may ariſe upon "or concerning the validity of any will, teſtament, or con-"tract of marriage, although the ſame ſhall not amount to "the ſum of five pounds ſterling, nor to any debt for any "money or thing won at or by means of any horſe race, "cock match, or any kind of gaming or play, or any debt "or demand for or on account of any ſpiritous liquors, any "thing herein contained to the contrary in anywiſe notwith-"ſtanding."

THESE exceptions ſpeak for themſelves.

"XXI. AND whereas the magiſtrates of the city of "Edinburgh have long been in the uſe and poſſeſſion of "holding a weekly court, for determining in a ſummary "manner, according to equity and good conſcience, all "cauſes and complaints brought before them for ſmall ſums "not exceeding ten merks Scots money, and of putting "their decrees into immediate execution againſt all perſons "reſiding within the ſaid city and liberties thereof: and "whereas it would be expedient to extend their juriſdic-"tion ſo far as regards the ſum or value of the cauſe to be "tried in that manner at their ſaid weekly courts; be it "therefore enacted, that the magiſtrates of Edinburgh ſhall "have full power and liberty as juſtices of the peace, and

§ 4. 39 AND 40 GEO. III. "they are hereby authoriſed at their aforeſaid weekly courts "to try, hear, and determine, in a ſummary manner, all "cauſes and complaints brought before them, concerning "the recovery of debts, or the making effectual any demand "againſt all perſons reſiding within the ſaid city of Edin- "burgh and liberties thereof, as deſcribed in a royal char- "ter in favour of the city, dated the twenty-third day of "October, in the year one thouſand ſix hundred and thirty- "ſix: provided always that the debt or demand ſhall not "exceed the value of forty pounds Scots.

"XXII. AND be it enacted, that in every caſe when "the claim or demand ſhall not exceed the aforeſaid ſum "of forty pounds Scots, the proviſions herein before con- "tained ſhall be, and the ſame are hereby directed to be "obſerved and put in execution by the ſaid magiſtrates of "Edinburgh at their ſaid weekly courts, and that their de- "crees ſhall be put in execution in the ſame way and man- "ner as herein before directed and authoriſed, relative to "the proceedings before and by the other juſtices of the "peace.

"XXIII. AND be it enacted, that the juriſdiction of the "juſtices of the peace in that part of Great Britain called "Scotland, ſo far as not regulated by this preſent act, ſhall "remain entire, and be exerciſed in the ſame manner as "they are entitled to exerciſe the ſame before the paſſing of "this act."

SINCE the firſt inſtitution of the ſmall debt court, in the year 1795, a period of little more than eight years, in the Edinburgh diſtricts alone of the county of Edinburgh, exclusive of the two other country diſtricts and the court held by the magiſtrates within the city, there have been determined no fewer than twenty-four thouſand ſix hundred cauſes, the ſums wherein amounted to 34,600l. ſterling

which could not have been otherwiſe recovered without involving both parties in an expence diſproportionate to the ſum at iſſue. We need not be ſurpriſed then at the "anxious deſire which," in this country as well as in England, "have been ſhewn to obtain theſe" ſmall debt "acts[a];" which are calculated to prevent a multitude of vexatious actions in the ſuperior courts, while they give honeſt creditors an opportunity of recovering their debts, which otherwiſe they would be deterred from by the expence of a ſuit at law.

§ 4. 39 AND 40 GEO. III.

SUMMARY as well as diſcretionary this juriſdiction may no doubt be. But the legiſlature have cautiouſly intruſted it to juſtices of peace alone, the moſt reſpectable noblemen and landholders of the country, who, though only two are requiſite to make a *quorum*, may yet all of them attend, and are all of them anſwerable for the regular and proper execution of it within their reſpective counties. Our ſmall-debt acts, therefore, do not appear liable to thoſe objections which have been made to the Engliſh courts of conſcience, of which judge Blackſtone ſpeaks with ſome heſitation; and (to uſe that great man's words) reſpecting county courts, are a plan entirely agreeable to the conſtitution and genius of the nation, and which, one would think, wants only to be generally known in order to be univerſally approved of.

[a] Blackſtone, b. iii, c. 6.

CHAP. V.

Of the Criminal Jurisdiction of the Seſſions.

§ 1. FOUNDATION AND LIMITATION OF THEIR JURISDICTION.

I. THE criminal juriſdiction of the ſeſſions, is, in li manner, derived either from the general ſtatutes or from particular enactments, or from the royal comm ſion.

THE firſt view, whether of the general ſtatutes, or of t commiſſion, would appear to embrace the whole range criminal juſtice, even in its moſt tremendous aſpects. I the commiſſion itſelf admoniſhes this judicature not to p ceed to the determination of cauſes of difficulty without t aid and direction of one or other of the ſupreme judg

How limited in England.

Accordingly, even in England, in matters of greater n ment, and in all queſtions without clergy, the ſeſſions, agr ably to the direction of the ſtatute [b], content themſel with binding over parties to the next gaol delivery [c].

In Scotland.

IN Scotland two reaſons concur ſtill farther to limit a diminiſh their criminal buſineſs. The *one* is, that the ſ

[a] 1617, and 1661.
[b] 1 and 2 P. and M. ch. 13.
[c] Burn, tit. Juſtices.

§ I. FOUNDATION AND LIMITATION OF THEIR JURISDICTION.

riff, ſince the new regulation of his court, relieves juſtices of the peace of great part of the criminal buſineſs, judicial as well as miniſterial, which falls upon their brethren in England; where the office of ſheriff, reſembling ours in name only, and held annually by one of the gentlemen of the county, is ſo far from having the ſame various and extenſive juriſdiction with our ſheriff-deputes, that the *tourne* or *leet*, (the criminal court of the Engliſh ſheriffs) is ſaid to have become almoſt obſolete. Mr. Woodeſon, therefore, has explained it very briefly, obſerving, that "it would be "loſing time to be more particular in treating of this court, "which is almoſt become obſolete;" and, with regard to the county court, (the ſheriff's civil court) he obſerves, "its "buſineſs and importance has been for ſeveral centuries de- "preſſed by a great variety of co-operating occurrences: "it retains few cauſes unleſs thoſe of *replevin*, which, as "before intimated, are frequently commenced here, and al- "moſt as frequently removed to a ſuperior judicature [a]."

Why more limited in Scotland than in England.

THE *other* is the different practice of the Scottiſh and Engliſh ſeſſions, in the important particular of jury trial, which the latter uſe always, unleſs in ſummary convictions, regulated by particular ſtatutes, (as in revenue queſtions, thoſe againſt ſwearing, drunkenneſs [b], &c. &c.) but the former, never.

THE records of the Scottiſh ſeſſions of the peace diſcover no trace of any ſuch practice. And in the earlieſt pleadings touching this magiſtracy, extant in the books of adjournal [c], it is ſtated, without contradiction, that they never employed an aſſize. But there appears to be nothing in their conſti-

Juſtices never employed an aſſize.

[a] Vinerean Lectures, lect. i, vol. 1 p. 12.

[b] Blackſtone, vol. iv, 280.

[c] The Records of the High Court of Juſticiary touching the Magiſtracy.

§ 2. FOUNDATION AND LIMITATION OF THEIR JURISDICTION.

tution incompatible with that mode of trial[a]. Neither can it be positively said that our legislature did not intend them to use it: for the general act 1661 authorised them to execute statutes which, in certain cases, inflicted corporal punishment, and by some of which the delinquents were expressly required to "*be put to the knowledge of an assize*." But, as sir George Mackenzie observes, they have never been in the practice of executing those criminal statutes according to the directions of the acts 1617 and 1661; and the true reason of their not being accustomed to employ juries, seems to be, what the same author also remarks[b], that "only small matters occurred in justice of peace court." Their jurisdiction appears in general to have been limited to those smaller delinquencies which, under the denomination of breaches of the police, even our judges ordinary summarily.

Why the sessions never employ juries.

BE the cause what it may, the fact is certain, and of itself excludes them from the cognisance of that class of offences, (whether contained in the commission and two general statutes, and whether falling under their general power and natural jurisdiction or not) which other judges must try in the constitutional mode of a jury trial, the importance whereof would be frittered away, were it in the power of the public prosecutor to deprive the subject of the benefit of it, by inditing him before any two justices of the peace.

Two objections have been stated to this doctrine, and in support of the more extensive criminal jurisdiction of

[a] In a case which will come under our notice afterwards, the late lord justice-clerk Macqueen, whose most extemporary opinions were carefully remarked, and will be long remembered observed that he saw nothing in their constitution incompatible with a jury-trial. 15th July, 1795. procurator-fiscal of the stewartry of Kirkbright against Fisher.

[b] Case of vagrants by the statute 1579, ch. 74.

[c] Observations on parliament James VI, 1617, c. 8.

§ 2. FOUNDATION AND LIMITATION OF THEIR JURISDICTION.

; *firſt*, it has been ſaid, that queen Anne's act [a], while
des that the trial ſhall be by the forms of the law of
d, extends the whole powers of the Engliſh juſtices to
ttiſh, ſo far as relates to the preſervation of the

6 Ann, c. 6.

this cannot make them competent without a jury
ognifance of any offence, which, by the immemorial
: of the country, had required a jury-trial. The con-
ould have been no leſs than ſo far aboliſhing that
onſtitutional ſecurity by implication. Accordingly
w of the thing ſeems to have been taken by the high
f juſticiary, in the only caſe where the abſtract point
n pleaded before them [b].

ther argument in favour of theſe more extenſive crimi-

. 6.

es Hay againſt John Hay, 1710. Maclaurin, No. 22. lay, reſiding officer of the was indicted before the juſ- he peace at Edinburgh, at ce of John Hay, comptrol- e cuſtoms at Preſtonpans, ourſe of the fiſcal, for ſu- itneſſes, on act 80 James V 8 Q. Mary. He offered a lvocation (certiorari), *inter* ding, juſtices of peace have ction in capital crimes.

ul.—" By 6 Anne the juſ- the peace in Scotland have e powers veſted in them that lices of peace in England and they are appointed to e aſſiſtance of one or more lords of juſticiary in pro- ng ſentence. Now that the of peace in England may " judge capital crimes, appears from " 18th Edward III, cap. 22; and 34th " Edward III, cap. 1; and Dalton, " *voce* Felony."

" *Replied.*—The act 6 Anne gives " no additional powers, but only ſuch " as are neceſſary for the preſerva- " tion of the peace, and had been in " uſe to be exerciſed by the privy " council; and even by the law of " England the juſtices do not judge " in capital crimes, but have only a " power of inquiring into and certi- " fying them to the juſtices of gaol " delivery; and the 18 Edward III " was reſtricted by the ſtatute 1 and " 2 Philip and Mary, as lord Hales, " in his Pleas of the Crown, and " Dalton both obſerve." The lords advocated the cauſe, or pronounced a judgment finding the juſtices incompetent.

§ 1. FOUNDATION AND LIMITATION OF THEIR JURISDICTION.

nal powers, has been drawn from the 33d ſection of the general ſtatute 1661, which provides, "that at what time, and "whenſoever one ſhall accuſe another perſon or perſons to "be guilty of treaſon, murder, or other felony, blaſphemy, "inceſt, or any other heinous crimes, in ſuch caſes the ſaid "juſtice or juſtices ſhall forthwith cauſe ſuch perſon to be "apprehended; and after inquiry made into the cauſe, the "ſaid juſtice or juſtices, if they find cauſe, ſhall commit "the offender to priſon, or take ſufficient bail, if the caſe "by the law be bailable, and ſhall take the information of "the accuſer, upon oath, and bind him to proſecute, and "ſhall take the teſtimony and depoſition of the witneſſes "likewiſe upon oath, and bind them to give an evidence, "and ſhall alſo take the examination of the party accuſed; "*all which recogniſance, informations, depoſitions, and examinations, the ſaid juſtice or juſtices ſhall certify to the next quarter-ſeſſions, aſſizes, or criminal courts, reſpectively, to the end the juſtice may proceed againſt them according to law.*" Individual juſtices are here, it is alleged, diſtinguiſhed from the ſeſſions. The one are to take precognitions and report. The other are claſſed with criminal courts competent to the trial of the crimes. This conſtruction of the act was likewiſe pleaded in the caſe above cited [a], but unſucceſsfully. And when that clauſe of the ſtatute came again under the view of the court [b], the counſel for the proſecution admitted that the words muſt be taken under the

Argument from 1661, § 33, in favour of the juriſdiction of the ſeſſions in great crimes.

[a] Charles Hay, in his bill of advocation, having pleaded that the juſtices had no juriſdiction in capital crimes, it was *anſwered* by the proſecutor,—"Even by our old law the "juſtices might judge in capital "crimes, at leaſt in quarter-ſeſſions. "This appears from the inſtructions "1661, which empower them to in"quire into ſeveral capital crimes, "and to certify them to the quarter"ſeſſions or criminal courts.

"*Replied*, 1ſt, the inſtructions 1661 "empower the juſtices not to judge "capital crimes, but only to inquire "and certify as to them."

[b] Procurator-fiſcal of the ſtewartry of Kirkcudbright, againſt Fiſher, 1795, July 15.

ception of crimes inferring death or demembration. But this conceſſion quits the literal conſtruction; and for the ſame reaſon excludes from their juriſdiction, not only crimes puniſhable by death or demembration, but all crimes requiring a jury-trial.

§ 1. FOUNDATION AND LIMITATION OF THEIR JURISDICTION.

WITH the exception, therefore, of ſummary convictions, introduced by poſitive enactment, which uſually chalks out the particular mode of trial, juſtices of peace, not uſing juries, are on that account incompetent to the trial of any offences of ſuch a deſcription, or puniſhable in ſuch a manner as to require an aſſize, when proſecuted before other juriſdictions.

II. THIS makes it neceſſary to inquire what cauſes require a jury trial.

§ 2. JURY-TRIAL, WHEN NECESSARY.

GUIDED in moſt other particulars by ſound and liberal principles, and eminently indulgent to the accuſed, our criminal code here, it muſt be owned, exhibits its darkeſt and moſt uncomfortable proſpect; what offences require, and what do not require, a jury-trial, neither appearing to be marked with ſuch preciſion, nor to depend on ſuch reaſonable grounds of diſtinction as might have been expected. "There is no point," obſerves lord Kilkerran [a], "leſs fixed "than this, when a trial was to be by a jury, and when "not." Such ſtill is the immaturity with us of this moſt important branch of criminal juriſprudence. Yet jury-trial is not of recent or foreign origin among us, but a native branch of our common law, which, of old, employed juries in all caſes, civil as well as criminal.

Not preciſely fixed.

Antiquity of jury-trial.

Anciently uſed in civil cauſes.

JURIES were firſt diſuſed in civil cauſes. The lords of

[a] Tit. Delinquency, No. 15.

§ 2. JURY-TRIAL, WHEN NECESSARY.

council and ſeſſion, a numerous court, conſiſting of no fewer than fifteen judges, ſucceeded the daily council, which, like the ancient ſeſſion, a parliamentary committee was "a com-"pond of biſhops, abbots, lords, gentlemen, and burgeſſes [a]," to repreſent the three eſtates of the realm [b]. It is there-

When firſt diſuſed in civil cauſes.

[a] Lord Kames' Law tracts, tr. 7.

Sir John Dalrymple ſays, there was no neceſſity for his majeſty chooſing them from the eſtates of parliament. Eſſay on feudal property, c. vii, § 1, p. 239. But he produces no authority in ſupport of this opinion. It is ſo far true, that although committees of parliament were choſen out of the three eſtates, viz. churchmen, landed men, and burgeſſes, yet it ſeems to have been entirely accidental, whether the judges, in any particular cauſe, conſiſted more of one eſtate than of another.

[b] The king's council of old were the ſupreme judges in civil cauſes; which ſometimes, in the firſt inſtance, were brought before them, although their principal juriſdiction in Scotland, as well as in England, conſiſted in attending to breaches of the peace, and to the regulation of inferior judicatures, by obliging them to do juſtice, and directing them in caſes of difficulty. In order to relieve the king and council of the weight of their judicial buſineſs, the old court of ſeſſion was eſtabliſhed in the reign of James I, by the ſtatute 1424, c. 65. "Our ſovereign lord the king, "with conſent of his parliament, "has ordained, that the chancelar, "and with him certain diſcreet per-"ſons of the three eſtates, to be "choſen and depute be our ſove-"rain lord the king, ſall ſit fra "thine forth three times in the zeir "quhair the king likis to command "them; quilk ſall know and exa-"mine, conclude and finallie deter-"mine all and ſundrie complaints, "cauſes and quarrelles, that may be "determined before the king and his "council. The quilk perſons ſall "have their expences of the parties "foundin faultis, and of their un-"lawes," (fines or mulcts) "or "otherwayes, as is pleaſand to our ſo-"verain lord the king." "The ſeſſion," obſerves ſir George Mackenzie, "was then a committee of par-"liament." Obſervations on this ſtatute. The number choſen for every ſeſſion appears to have been three out of each eſtate, viz. nine ordinary judges, who, with the chancellor, formed the court. Afterwards we read of the lord clerk regiſter being, *ex officio*, one of the judges. An act of James II, marked in the black acts, c. 65, 1456, contains the following nomination for the firſt month, or ſeſſion, of that year.

For the clergy.—The biſhop of Dunkelden, the abbot of Paiſley, the abbot of Melros.

For the barons.—The lord of Graham, ſir Patrick Hepburn, the laird of Carnbee.

For the commiſſaries of burrows.—William Cranſton of Edinburgh, Robert Narn of Striviling, Robert Marſer of Perth. Then follow the names

ſure not merely from the number of judges, but by a ſort of hereditary conſtitution, that the lords of ſeſſion have

§ 2. JURY-TRIAL, WHEN NECESSARY.

of other judges appointed for the following ſeſſions, being, in like manner, nine for each. By another act of the ſame reign, c. 63, it was provided, that "the lordis of the ſeſſioun ſall ſit thryis in the yeir, ilke time forty "dayis, in thir thre places, Edenburgh, "Perth, and Aberdene. The num- "ber of the perſouns that ſall ſit ſall "be nine, haveing power and voittes "in the deliverance of cauſis, of ilk "ane of thaim three, and the clerke of the "regiſter. The ſeſſioun now next to "begin, and halden at Aberdene, the "15th day of Junii, and contenand "40 dayis. The ſecond ſeſſioun to "begin in Perth thereafter, the fifth "day of October, and continue other "40 dayis. The third ſeſſioun to be- "gin in Edenburgh the 13 of Fe- "bruar nixt thereafter, and to conti- "nue 40 dayis."

This old court was called *the Seſſion*; becauſe, inſtead of being, like the council, itinerant, and without any fixed terms of ſitting, it was ordained to have three ſeſſions in the year at ſtated places. The form, however, was found inconvenient, as the judges ſerved by rotation, and were changed from time to time, ſo that they could not be ſuppoſed to acquire any tolerable knowledge of the law. For theſe reaſons, ſome of our writers ſay, that the *ſeſſion* came to be virtually ſuperſeded, before it was expreſsly aboliſhed in 1503. The two acts, 1469, c. 27, and 1465, c. 63, give ſome countenance to this ſuppoſition by taking no notice of the ſeſſion; but enacting, that all cauſes ſhould firſt go to the judge ordinary, and that, if parties were aggrieved, they might apply to the king and his council. Sir G. Mackenzie, however, in his obſervations on the former of theſe acts, ſays, that the old ſeſſion and the council were only different names for the ſame court. Certain it is, that we find meetings of a court called the *ſeſſion*, ſometimes the *council*, and ſometimes the *council and ſeſſion*, down to a later period than the acts laſt mentioned; and this court was evidently a committee of parliament, choſen as the old ſeſſion was, and exerciſing the ſame ſort of juriſdiction; ſo that it was probably neither more nor leſs than a continuation of the old ſeſſion.

The neceſſity of ſome farther remedy appears from the narrative of the ſtatute, James IV, 1503, ch. 58; which ſtates, "that there hes been "greate confuſion of ſummoundes at "ilk ſeſſion, ſa that leiſure nor ſpace "at a time of the zeir might not "have been had for the ending of "them: and, therefore, puir folks "hes been delayed and deferred fra "zeir to zeir, throw the quilk they "wanted juſtice; therefore, for eſ- "chewing the ſaid confuſion," &c. the ſtatute inſtituted a new court, called the *daily council*, to ſit continually in Edinburgh, or at any other place where it ſhould pleaſe the king, to decide all manner of ſummonſes in civil matters, complaints, and cauſes, daily, as they ſhould happen to occur, with the ſame power which the lords of ſeſſion formerly had.

§ 2. JURY-TRIAL, WHEN NECESSARY.

always been conſidered as the jury, or grand aſſize, of the nation *in civilibus* [a].

This court ſeems to have conſiſted of a greater number of members than the old ſeſſion. "This court alſo," obſerves lord Kames, (ibid.) "was de-"fective, having *no quorum* named, "nor any compulſion on the judges "to attend; by which defect it fre-"quently happenced that a cauſe "paſſed ſucceſſively through the "hands of ſeveral judges."

James V, therefore, in order to remedy theſe inconveniences, in the year 1532, inſtituted the preſent court of ſeſſion, under the name of the *college of juſtice*. In the later editions of our ſtatutes, the acts eſtabliſhing the college of juſtice are dated erroneouſly in the year 1537; but from the record copy in the general regiſter-houſe, as well as from the black acts, and other evidence, it is certain that the real date of them was in 1532. The ſixth act of that year, upon the recital, "that his majeſty was deſirous to "have a permanent order of juſtice, "for the univerſal weal of all his "lieges," ordains, "that there be "choſin certane perſounis maiſt con-"venient and qualifeit thairfoir, to "the number of 14 perſounis, half "ſpiritual, half temporal, with ane "preſident; the quilkis perſounis ſall "be authorizat, in this preſent par-"liament, to ſit and decyde upon all "actionis civile; and nane uthers to "have voit with them unto the "tyme the ſaid college may be inſti-"tute at mair laſar."

By the next chapter, the times of their ſitting were aſcertained, and a nomination of the judges was made, conſiſting of ſeven clergymen and ſeven laymen, as ordinary judges, with the abbot of Cambuſkenneth at their head, as preſident, and providing that the lord chancellor being preſent, ſhould have vote, and preſide; and likewiſe, that the king ſhould have it in his power to join to them *three* or *four* of his great councel, to *have vote* with the other judges theſe were called extraordinary lords. The *quorum* was firſt made *eleven*, including the lord chancellor, or preſident, but afterwards brought down to *nine* (act 1587, c. 44.) And it was declared that the ſentences and decrees of that court ſhould have the ſame ſtrength and effect as the decrees of the ſeſſion had in time bygone. A power was alſo given to the judges to regulate their own proceedings.

The judges were dignified with the appellation of *ſenators of the college of juſtice*, and with the name of *lords of ſeſſion*, or *lords of council and ſeſſion*. The firſt judges appear to have been choſen by the parliament, but afterwards the nomination came to be ſolely in the king, and the naming of ſpiritual judges ceaſed upon the reformation, or ſoon after it. (See pamphlet, intitled, Explanation of the bill for augmenting the ſalaries, and leſſening the number of the judges in the courts of ſeſſion and exchequer in Scotland; by a gentleman who aſſiſted in forming the plan of the bill.)

[a] "In all courts," obſerves lord Kames, "civil and criminal, govern-"ed by a ſingle judge, we find juries

§ 2. JURY-TRIAL, WHEN NECESSARY.

THIS high tribunal, therefore, like the two which it ſucceeded, never employed an aſſize.

"always employed. On the other "hand, juries were never employed "in any Britiſh court where the "judges were ſufficiently numerous "to act as jurymen. Accordingly, in England," his lordſhip adds, "I am verily perſuaded that the continuance of jury trial in theſe new "courts" (king's bench, exchequer, common pleas) "was owing to the "following circumſtance, that *four* "judges only were appointed in each "of them, and but a ſingle judge in "the circuit courts." Law tracts, tr. 7. This opinion of lord Kames is diſputed, in the pamphlet cited above, in the following paſſage:—"As to "the hiſtory of jury-trial, and its "continuance or diſuſe in courts of "common law, whether in England "or Scotland, I have not been able "to diſcover, that this was ever underſtood to have any connection "with the eſtabliſhment of thoſe "courts in point of number. In "England, from the earlieſt times "down to the preſent moment, it is "believed the mode of trying iſſues "in fact in the common courts of "law has been by jury, with ſome "exceptions. The ſame was originally the caſe in Scotland, and would "probably have continued to be ſo, "whether the judges were numerous "or few, had not the form of inſtituting actions by brieves wore out "gradually, and a new form of ſummonſes been introduced, more conſonant to the practice of the eccleſiaſtical and civil law courts.

"Brieves iſſuing from chancery in "the king's name, and directed to "the judges ordinary, for trying any "iſſue in fact, were the proper au"thority or warrant for calling in"queſts, in order to try that iſſue; "and theſe eſtabliſhed brieves being "limited in number and form, and "conſequently ill adapted to the trial "of new caſes, this, together with an "act in the reign of James IV, 1491, "c. 24, gave the firſt check to that "ancient conſtitutional mode of determination in Scotland. The act "alluded to ſtatutes and ordains, "*that na brieves nor other letters be* "*given to na partie, but after the form* "*of the brieves of the chancellaries uſed* "*in all times of before; and that the* "*form of the chancellarie be heiped and* "*obſerved without innovation or eiking* "*of new termes: and gif onie beis given* "*utherwaies, that they be of na force nor* "*effect, except the brieve of ſummoundes* "*of error.*" This ſtatute muſt have "had a very great effect upon the civil buſineſs of the country, as the "fixed forms of the cuſtomary brieves "could not ſuit newly emergent caſes. "In England the matter was otherwiſe conducted. By a ſtatute in "Edward the Firſt's time, cap. 24, it "was enacted, *Quotieſcunque de cetero* "*evenerit in cancellaria, quod in uno ca-*"*ſu reperitur breve et in conſimili caſu* "*cadente ſub eodem jure et ſimili indigen-*"*te remedio, concordent clerici de cancel-*"*laria in brevi faciendo vel atterminent* "*querentes in proximo parliamento et* "*ſcrebant caſus in quibus concordare non* "*poſſunt et referant eos ad proximum* "*parliamentum et de conſenſu juriſperi-*"*torum fiat breve, ne contingat de cetero* "*quod curia diu deficiat querentibus in*

§ 2. JURY-TRIAL, WHEN NECESSARY.

THE example of the ſupreme tribunal was readily imitated by inferior judicatures, whoſe gradual diſuſe of juries "will not ſurpriſe us," remarks lord Kames, "when it is "conſidered that an appetite for power, as well as for imi-"tating the manners of our ſuperiors, do not forſake us "when we are made judges [a]."

JURIES were probably firſt diſuſed in civil queſtions, and next in thoſe criminal actions where the private party concluded for pecuniary reparation. It would not appear a violent or undue ſtretch to diſpenſe with an aſſize in ſmall criminal proſecutions, which concluded only for fine and impriſonment, although brought at the inſtance of the procurator-fiſcal. The way was prepared even for the latter puniſhment, by the immemorial practice of the royal boroughs, of impriſoning debtors in civil cauſes by acts of warding [b].

So far the thing appears to be ſanctioned by the acquieſcence of the country, and by the deciſions of the courts of

"*juſticia perquirenda.*" "Had any "thing of this kind taken place in "Scotland, the old form of jury-trial "in civil caſes, where the iſſue turn-"ed upon fact, would have been pre-"ſerved; and it is certain that brieves "continued long after the eſtabliſh-"ment of the old ſeſſion, and in "ſome inſtances continue to this day."

[a] Ibid. Lord Kames adds, "were "the ancient records preſerved of "theſe inferior courts, it would, I "preſume, be found that civil cauſes "were tried in them by juries, even "after the inſtitution of the college "of juſtice," &c.;—"conjecturing "that the old form of jury trials "might wear out more ſlowly in "ſhires remote from the capital, I "continued to ſearch, and in the re-"cord luckily ſtumbled on a book of "the ſheriff's court of Orkney, be-"ginning 3d July, 1602, and ending "29th Auguſt, 1604; all the proceſ-"ſes in this book, civil as well as "criminal, are tried by juries." Law tracts. Ibid.

[b] The ſecond ſtatute of Robert I, c. 19, (an adoption, as is ſuppoſed, of the Engliſh ſtatute 13 Edward I) lord Kames preſumes to be the foundation of the act of warding, peculiar to royal boroughs. But this will more properly be noticed in treating of *meditatione fugæ* warrants.

law. Juries are not underſtood to be neceſſary in petty riots, tuilzies, or brawls, ſmall thefts, termed pickery or pilfering, or in general in thoſe other leſſer delinquencies which are not ſolemnly tried, and ſeverely puniſhable as crimes, but checked by fine and impriſonment, as breaches of the peace, and offences againſt the public police [a]. § 2. JURY-TRIAL, WHEN NECESSARY.

[a] It may be proper to mention, from the books of adjournal, a few of the caſes that have been decided upon this important point. The firſt that may be mentioned is the caſe of Alexander Flight, (noticed by Mr. Hume, Crim. law, vol. iii, c. 6, p. 235), who was guilty of inſulting the provoſt of the borough of Cupar, and reſiſting his officers. The bailies ſentenced him to pay a fine of 5l. to be impriſoned for a month certain, and until payment of the fine; and to be baniſhed from the burgh for three years, under certification of whipping, in caſe of his return. The ſentence was brought by him under the review of the high court of juſticiary; who ſuſtained it, excepting with reſpect to the laſt particular, June 13, 1767. But this ſeems rather to belong to another claſs of caſes, which will be noticed below, viz. the power of all perſons in *authority* ſummarily to protect their dignity.

The court had an opportunity of declaring unequivocally their opinion touching this right of trial by jury, in the caſe of Craig and Clark, who were indicted to ſtand trial before the ſtewart of Kirkcudbright for an aſſault and battery. The puniſhment concluded for was impriſonment, fine, damages, and ſecurity for good behaviour. The ſtewart found that the caſe required a jury, and gave orders to ſummon one on an *inducia* of 15 days. This judgment was complained of in a bill of advocation; wherein the defenders pleaded, that if a jury were to be ſummoned, it could only be in a new proceſs, and on another libel or complaint. The lords remitted to the ſtewart-depute; with this inſtruction, that he proceed in the original complaint without a jury, and do therein as he ſhall ſee cauſe. 15th March, 1788.

And a woman, of the name of Jean More, was ſentenced by the magiſtrates of Edinburgh to be confined in the correction-houſe, conducted through the ſtreets by tuck of drum, and privately whipped, for harbouring young boys who broke ſhops, and for keeping a houſe of bad fame. She brought the matter before the court of juſticiary by a bill of ſuſpenſion, which was refuſed. 1784, Jan. 17. It was an aggravation of this woman's guilt, that ſhe was under ſentence of baniſhment from the city on account of former miſdemeanours.

In another caſe, a complaint, narrating, that taking away a perſon's property, without his knowledge and conſent, is a crime of a heinous nature, and ſeverely puniſhable, eſpecially when committed in breach of truſt; and ſtating, that the defender, one Fairbairn, was guilty art and part thereof, in ſo far as he had taken corns out of a barn

§ 2. JURY-TRIAL, WHEN NECESSARY.

So far convenient at leaſt, if not neceſſary, the thing ſeems to be liable to no objection, nor to threaten any conſiderable danger. Indeed the learned judge, whom we have ſo repeatedly mentioned in this hiſtorical ſurvey, and "whoſe "works," ſays ſir William Blackſtone, "have given exqui-"ſite pleaſure to every contemplative lawyer [a]," obſerves, "I cannot here avoid declaring my opinion, that in civil "cauſes it is a real improvement to truſt with eſtabliſhed "judges the power of deciding on facts as well as on law. "A number of men trained up to law, and who are daily "in the practice of weighing evidence, may undoubtedly "be more relied on for doing juſtice, than the ſame num-"ber occaſionally collected from the maſs of the people, to "undertake an unaccuſtomed taſk, that of pronouncing a "verdict on an intricate proof [b]." And another diſtinguiſhed judge, who was never ſuſpected of being unfriendly to public liberty, or to the rights of the people; or liable to be biaſſed by the peculiarities of the law in which he was educated, expreſſes himſelf in ſimilar terms.—"I am fully con-"vinced that our anceſtors judged wiſely in departing from "the ancient cuſtom of determining, even matters of fact, "by the verdict of juries in queſtions of civil right [c]."

Jury-trial, if properly laid aſide in civil cauſes.

where he was employed as a threſher; and concluding that he ſhould be exemplary puniſhed in his perſon and goods, was found relevant to infer an arbitrary puniſhment, and a proof of the libel and exculpation being allowed, the bailies ſentenced the defender to pay 5l. of fine, 2l. to the procurator-fiſcal, and the expences of the action. A bill of advocation was preſented; of which the ſecond reaſon was the want of a jury in the caſe of theft, charged as a heinous offence.—*Anſwered*, no jury was craved, and it is the uniform practice of ſheriffs to fine and impriſon, without remitting the libel to an aſſize. 1787, July 26. The lords refuſed the bill.

[a] B. iii, c. 27, Ed. Dub. 1771.

[b] Law tracts, tr. 7.

[c] Lord Gardenſtone's MS. tit. Aſſize. But this remark, ſo far from intitling us to conclude that his lordſhip did not duly appreciate the importance of trial by jury, was indeed made upon the occaſion of his mentioning with diſapprobation a well-known author, who undervalues its uſe even in criminal matters; touching which, his lordſhip obſerves, "in a free country it is ſafer

§ 2. JURY-TRIAL, WHEN NECESSARY.

BUT innovations once begun are not eaſily reſtrained within proper bounds. That ambition and luſt of power, to which lord Kames aſcribes the diſuſe of juries by inferior judicatures in civil cauſes and petty delinquencies, naturally prompted them to hazard more ſerious deviations from the cautious and benign ſpirit of our ancient juriſprudence. Accordingly, juſtices of peace, ſheriffs, magiſtrates of boroughs, but particularly the latter, proceeded the ſtill farther length of trying in the ſame ſummary manner, grave and ſerious offences, which not only ſubject the culprit to the ſevereſt arbitrary puniſhment, but neceſſarily degrade his character and eſtimation in ſociety.

Farther alterations of the ancient law.

THIS dangerous innovation of the principles of the common law, and encroachment on the perſonal rights of the lieges, was at one period too much countenanced by ſome deciſions of the high court of juſticiary, which however ſoon perceived and corrected the miſtake; and in the celebrated caſe of Leonardo Piſcatore, returned to thoſe ſounder and more conſtitutional views, which have ever ſince guided its practice in this intereſting particular.

SIMPSON, with concourſe of the fiſcal, brought a criminal action before the ſheriff of the county of Edinburgh againſt Mr. Piſcatore; ſetting forth, that the defender had fired a gun or piſtol at him, loaded with ſmall ſhot, by which he was grievouſly wounded; and therefore concluding that the defender ſhould be decreed to pay 500l. ſterling of damages, and for a corporal puniſhment, by whipping, pillory, impriſonment, or otherwiſe. Piſcatore moved the ſheriff for a jury-trial: but the ſheriff found there was nothing in the

" to commit the trial of crimes to ju-
" ries than to judges, eſpecially the
" trial of political crimes, in which
" ancient experience teaches us that
" an eſtabliſhed court of judges may
" be more eaſily influenced by the
" power and corruption of a court
" than honeſt private men, who are
" called by rotation to be jurymen
" upon different trials."

§ 2. JURY-TRIAL, WHEN NECESSARY.

complaint, or its concluſions, that rendered a trial by jury neceſſary; and he afterwards refuſed a reclaiming petition, without anſwers. Upon this, Piſcatore preferred a bill of advocation to the court of juſticiary, in which he contended that he was intitled to a jury-trial. At the ſame time he agreed that the trial ſhould proceed before the ſheriff without a jury, if the court ſhould direct the ſheriff to reſtrict the puniſhment to a pecuniary reparation. Simpſon put in anſwers to the bill, agreeing to reſtrict the concluſions of his libel to a pecuniary reparation; "but the court," obſerved the learned author who reports the caſe, "*moſt properly laid* "*hold of this opportunity to teſtify their diſapprobation of the* "*mode of trial intended by the ſheriff;*" and pronounced the following judgment: "Having conſidered the ſaid bill and "anſwers, with the criminal complaint before the ſheriff, "find the libel referred to in the bill ought to have been "tried by a jury; and therefore remit the cauſe to the ſhe- "riff, with this inſtruction, that he alter his interlocutor "complained of, and diſmiſs the libel; reſerving to the "purſuer to inſiſt in a new libel before the ſheriff, or any "other competent court, as accords of the law [a]." "This "judgment," he farther adds, "merits the higheſt ap- "plauſe; and will, it is hoped, put an end to ſuch mode "of trial for the future, excepting when ſpecial ſtatutes "authoriſe it: of theſe, it muſt be lamented, there are too "many [b]."

In any trial for a heinous offence, though only pecuniary reparation be concluded for.

IT deſerves notice, that in this caſe the purſuer agreed to reſtrict his libel to a pecuniary reparation. But the court diſregarded this, as it could not alter the deſcription of the offence charged, which was not a petty breach of the peace, but a heinous crime. Independently of the puniſhment altogether, the diſgrace of a conviction for an offence of any magnitude, or heinous nature, appeared to their

[a] Maclaurin, No. 100. [b] Ibid.

hardſhips to be too ſerious and great an evil to be inflicted by a judge without the intervention of a jury. This has ever been conſidered, and quoted, as a leading caſe [a]. § 2. JURY-TRIAL, WHEN NECESSARY.

JURIES then, though not uſually employed in the trial of petty diſorders and offences againſt police before inferior courts, are indiſpenſable in a "charge of any grave or ſe-"rious tranſgreſſion [b]," or any crime at all of a higher denomination; which therefore may be laid down as not competent to be tried before the ſeſſions of the peace.

III. BUT, *ex converſo*, it cannot be ſtated that the ſeſſions are competent to take cogniſance of all thoſe lower offences or diſorders which may be ſummarily tried by other magiſtrates without the formality of a jury-trial. It becomes neceſſary, therefore, more particularly to inquire what offences they can try. § 3. OFFENCES COGNISABLE BY THE SESSIONS OF THE PEACE.

FIRST, then, the ſeſſions of the peace have the ſame power with other judges, to puniſh ſummarily, and of their 1ſt, Diſturbances in court, or offences againſt the judges.

[a] A ſimilar deciſion was pronounced in the advocation at the inſtance of William Brown, March 19, 1783, where the lords found, "that the li-"bel or complaint referred to in the "bill of advocation, which contains "a charge of different acts of aſ-"ſaulting, wounding, and maiming, "whereby the perſons therein nam-"ed were in danger of being mur-"dered; and alſo charging, that, in "purſuance of theſe aſſaults, the de-"fenders ſeized, and theftuouſly car-"ried off, certain effects belonging "to the perſons aſſaulted; and con-"cluding for puniſhment, by whip-"ping, pillory, baniſhment, or other-"wiſe, as to the judge ſhall ſeem "meet, ought to have been tried by "a jury." The like deliverance was given, of the ſame date, on the bill of ſuſpenſion for William Ballantyne, who was charged with ſimilar offences, and in a libel which concluded for the ſame puniſhment. The third deciſion was in the ſuſpenſion at the inſtance of John Johnſton, on whom the magiſtrates of Edinburgh, as ſheriffs of that city, had paſſed ſentence of whipping and baniſhment, on a charge of aſſaulting a young woman in her houſe, and forcibly carrying her away from thence, under pretence of a warrant which he had feigned or falſified for that purpoſe. 1789, 23d February.

[b] Hume, Crim. law, vol. iii, p. 240.

§ 3. OFFENCES COGNISABLE BY THE SESSIONS.

own motion, all ſuch diſorders and miſdemeanours, commi ted in court during the progreſs of a trial, as are either diſturbance of the judges in the exerciſe of their function or a violation of that reſpect and deference which ought t be obſerved towards them when proceeding in their office Such offences may be puniſhed *ſummarily* by the cou of juſticiary, although trial by jury is the regular and ordi nary way of trial in that court for all crimes, whether grea or ſmall; and, for the ſame reaſon, they are competent be fore the ſeſſions of the peace, when they are committe againſt that juriſdiction. We may therefore, perhaps, adopt with little variation, Mr. Hume's enumeration of offences o this deſcription, which indeed he gives, not as applicable t the court of juſticiary alone, but to "every judge of what "ſoever degree." Such are, "the hinderance or moleſta "tion of the macers, or other officers of court, in thei "duty; the uſe of any threatening or contumelious ſpeech "or geſture there, with relation to the judge, or the trial "any open expreſſion, of either cenſure or approbation, o "the proceedings of the judge, as by acclamation or other "wiſe; nay, the wilful and repeated breaking of ſilence in "court: all theſe are examples of this ſort of blameable "contempt, for which the magiſtrate may reprove the de- "linquent of his own knowledge, and upon the ſpot. All "wilful diſobedience, or groſs neglect of the orders and "precepts of court, in matters relative to any trial, is in "like manner neceſſary to be ſubdued without delay, other- "wiſe the courſe of juſtice would be liable to be ſtopped "by the refuſal of jurors to ſerve, or of witneſſes to appear "or to anſwer, and the like [a]."

THE ſeſſions appear to have the ſame power with other judges of ſummarily puniſhing any "attempts which may be made with relation to any trial depending at the

[a] Crim. law, vol. iii, c. 6, p. 220.

§ 3. OFFENCES COGNISABLE BY THE SESSIONS.

"time, or which has recently been ſo, to ſlander the pro-"ceedings of court, or to depreciate the character, or ſully "the honour of the judges [a], or to impoſe on their wiſ-"dom, and pollute the channels of juſtice, to the prejudice "of a fair and unbiaſſed trial between the parties [b]," as by detaining, miſleading, overawing, or corrupting, witneſſes; or altering, ſuppreſſing, or deſtroying evidence, or by the witneſſes themſelves, when ſummoned to give evidence, not attending, or keeping a contumacious ſilence, or attempting to prevaricate. But in ſuch caſes the offence muſt have been committed againſt the court, or in relation to ſome procedure of the court, which puniſhes them thus ſummarily. This holds with regard to the juſticiary court itſelf [c].

Offences committed by their officers.

In like manner, the ſeſſions are a competent, and indeed the proper judicature, for taking cogniſance of offences committed by their own officers in the execution of their duty; by negligence, extortion, and the like.

2d. Offences of which they have cogniſance by the general acts.

In the *ſecond* place, juriſdiction has been expreſsly committed to them in certain offences, which may be divided into two claſſes; firſt, thoſe mentioned by the ſtatutes 1617, 1661, or by 6 Anne, c. 6, or by the king's commiſſion, which toge-

[a] Bell againſt Dundas. See above, c. 2, § 4.

[b] Hume, ibid.

[c] Thus the court diſmiſſed as incompetent (Nov. 21, 1797), a complaint at inſtance of the lord advocate againſt Alex. Ritchie, who, as agent for a private party, was conducting a precognition before a ſheriff, and was charged with practices tending to corrupt the witneſſes on that occaſion. As the precognition here was neither in the court of juſticiary nor at the inſtance of the lord advocate, who has a public and fixed relation to that tribunal, this was held to be a ſufficient reaſon why he could not complain to them of thoſe irregularities in this brief and ſummary faſhion; but in the ſhape of indictment only, if he ſhould ſee cauſe to raiſe one. And in like manner was diſmiſſed (January 29, 1798), a complaint at the inſtance of the ſaid Alexander Ritchie againſt Stewart, Brown, and others, printers and owners of a newſpaper, for having publiſhed in that form a partial account, as he alleged, of the lord advocate's complaint againſt him.

§ 3. OFFENCES COGNISABLE BY THE SESSIONS.

ther form the general code of law, touching this magiſtracy 2dly, offences committed to them by particular enactments Both theſe branches of their juriſdiction will more properly fall to be explained under their reſpective heads.

3d, Conſuetudinary juriſdiction in petty delinquencies.

IN the *third* place, the ſeſſions have been in the practice (too long ſanctioned by the ſupreme courts to be now raſhly queſtioned) of exerciſing juriſdiction in certain petty delinquencies, which have neither been expreſsly committed t them by any ſtatutes, whether general or particular, nor b the royal commiſſion. One example of this is the offenc

Pickery.

of petty theft, or pickery, or pilfering. In a caſe of thi kind, where the ſentence, on account of its ſeverity, an indeed the whole procedure, on account of its irregularity was diſapproved of by the ſupreme court, not without ex preſſions of reprehenſion and blame, yet, in general, the juri diction, though its incompetency made one of the reaſons o review, was not doubted of nor diſcountenanced [a].

[a] David Wilkie againſt the procurator-fiſcal of the juſtices of Fife, 10th July 1798. The point of juriſdiction was not the principal ground on which the judgment of the juſtices in this caſe was brought under review. Indeed that objection was very ſhortly ſtated, and by no means appeared to be relied upon. Though the court paſſed the bill of ſuſpenſion, it was upon other grounds, not as entertaining any doubt of the competency. Wilkie had been verbally complained of to one of the juſtices, as having been guilty of ſtealing fowls from the complainer's barn-yard. The juſtice upon this wrote the following warrant: "County of Fife." "Where- "as complaint has been made to me, "the ſubſcriber, one of his majeſty's "juſtices of the peace for the ſaid "county, by Mr. A. B.; that, for "conſiderable time paſt, he has fr "quently loſt a number of fowl "which he verily believes have bee "ſtolen; and that laſt night he caugh "on his premiſſes and ſeized Davi "Wilkie, ſcuar in Leven, commonl "called Cuffabout, in the act of ſtea "ing his fowls;—warrant is hereb "granted, and you are ordered t "ſummon the ſaid David Wilkie t "be, and appear before the ſaid ju "tices of peace, in a court to be hel "at on Monday firſt, th "4th June inſtant, at 12 o'cloc "noon, to anſwer the ſaid complain "and other matters touching th "peace, with certification that h "will then be proceeded againſt, an "no delay granted. Given und "my hand, at this 1ſt

§ 3. OFFENCES COGNISABLE BY THE SESSIONS.

THIS juriſdiction does not ariſe from the clauſe of the act 1661, reſpecting felonies and heinous crimes, providing, that "at what time and whenſoever one ſhall accuſe another perſon or perſons to be guilty of treaſon, murder, or other felony, blaſphemy, inceſt, or any other hainous crimes, in ſuch caſes the ſaid juſtice or juſtices ſhall forthwith cauſe ſuch perſon or perſons to be apprehended; and, after inquiry made in the cauſe, the ſaid juſtices,

Origin of juriſdiction in petty offences.

"June 1798 years. Signed and addreſſed to A. T. or any other conſtable in the county of Fife. This warrant was ſerved on Wilkie, who appeared on the day ſpecified; when the complainer and two witneſſes having been examined on oath, the judices pronounced the following judgment: "The juſtices having conſidered the complaint againſt David Wilkie, and the depoſitions of," &c.; "and in conſequence of the former delinquencies and convictions, with the notoriouſly-bad character of the ſaid David Wilkie, find him guilty of the crime libelled; and ſame time fully conſidering his circumſtances, and looking on him as an incorrigible rogue, decern and adjudge him to pay the ſum of 10l. ſterling to the miniſter and ſeſſion-clerk of the pariſh of S. to be by them applied for the uſe of the poor of that pariſh, in name of fine; and further, decern him to pay the ſum of 20s. in name of expenſes; and they farther adjudge the ſaid David Wilkie to be impriſoned and confined in the common jail of Cupar for the ſpace of ſix kalendar months; and they further decern and adjudge him to find good and ſufficient ſecurity to the ſatisfaction of the procurator-fiſcal of the county, himſelf and two ſecurities, conjunctly and ſeverally, for his keeping the peace towards the ſaid A. B. and all other his majeſty's ſubjects; as likewiſe to his good behaviour for the term of ſeven years, after the expiry of the ſaid ſix months, to pay the expence of the ſaid bail-bond, his priſon-fees, and all other expences, and to remain in priſon until this ſentence is fulfilled. Witneſs our hands, at 4th June, 1798."

Lord Swinton, ordinary, (1798, 28th June) refuſed a bill of ſuſpenſion preſented againſt this interlocutor, "in ſo far as concerns two months impriſonment, and finding caution for the complainer's keeping the peace for three years after the expiry of the ſaid two months, but paſſes the bill *quoad ultra*."—Wilkie having preferred a petition to the court againſt this interlocutor, their lordſhips did not entertain any doubt that the ſeſſions had juriſdiction in ſuch an offence as this; but they thought it irregular and improper that there was no complaint by the procurator-fiſcal; and yet a puniſhment inflicted—no written com-

§ 2. OFFENCES COGNIZABLE BY THE SESSIONS.

" if they find ſufficient cauſe, ſhall commit the offender to " priſon, or take ſufficient bail, if the crime by law be bail- " able, and ſhall take the information, &c.; all which re- " cogniſances, &c. the ſaid juſtices ſhall certify to the *next* " *quarter-ſeſſion*, aſſizes, or criminal courts reſpectively, to " the end the juſtice may proceed againſt them according to " law." This clauſe relates to *heinous* offences, which, requiring a jury-trial, are, as we have ſeen above, on that account alone incompetent before the juſtices, according to that plan at leaſt on which the ſeſſions have hitherto exerciſed their criminal juriſdiction. It has no connection, therefore, with this juriſdiction in petty delinquencies, which even other judicatures try ſummarily.

NEITHER does this juriſdiction ariſe from queen Anne's act, which, as we have alſo ſeen, conferred no new juriſdiction on this magiſtracy, but only removed ſome limitations which had prevented the full operation of their powers touching the peace.

THE difficulty ariſes entirely from conſidering this juriſdiction as an exerciſe of the peculiar functions of the criminal judge. Its origin therefore will be more ſurely traced by attending to its nature; and to the view in which thoſe delinquencies are at all puniſhable. This may be illuſtrated in the ſame caſe of pickery or pilfering. The crime of theft, properly ſo called, muſt be tried in the ſolemn method of indictment and aſſize; it may be puniſhed capitally. But thoſe leſſer deſcriptions of it, as well as all

plaint at all—no information given the delinquent of the nature of the complaint—and the private complainer ſworn as a witneſs. On account of theſe, and other irregularities, their lordſhips *paſſed the bill*, that the cauſe might be properly conſidered; but the opinion of the court, at the adviſing of the bill, being ſo decidedly againſt the judgment, the procurator-fiſcal and juſtices did not attempt to inſiſt in the cauſe any farther; and Wilkie, relieved from all further queſtion, or apprehenſion of puniſhment about the matter, was ſo far victorious.

§ 3. OFFENCES COGNISABLE BY THE SESSIONS.

thoſe other delinquencies in queſtion, are rather conſidered in the light of interruptions merely of the public tranquillity. Accordingly ſuch offenders are ſummarily puniſhed even by judges ordinary. As they may be taken cogniſance of by ſheriffs and magiſtrates of boroughs, without the formality of a jury, ſo, for the ſame reaſon, they are competent before the ſeſſions, the proper police magiſtracy.

SUCH is the view taken by the juſtices themſelves of this branch of their juriſdiction, as appears from the uſual ſtile of the complaints, and of the interlocutors in ſuch caſes. Thus, in one caſe of pickery, the laſt part of the ſentence was, to "find ſecurity to the peace, and for good behaviour[a];" implying that the offence had been puniſhed as a breach of the peace, and of good behaviour. In like manner, another example of this extenſive conſtruction of their care of the peace was not diſcountenanced in a late caſe. A gentleman's ſervant finding a horſe on his maſter's grounds, cruelly maltreated it. The owner of the horſe brought an action of damages againſt both the maſter and the ſervant, alleging that the latter had committed the miſdemeanor at the inſtigation of the former. The juſtices, "in reſpect the "offence alleged is complained of as a *delinquency and* "*breach of the peace*, ſuſtain their juriſdiction." This judgment was affirmed by the quarter-ſeſſions. Thereafter, on adviſing a proof, the juſtices found again both defenders liable. This judgment was indeed altered by the court of ſeſſion. But their lordſhips went upon the ground of no proof appearing againſt the maſter, who alone had brought the cauſe under their review. They entertained no doubt of the competency of the juriſdiction, although that point alſo was pleaded[b].

[a] Wilkie. See *ſupra*, page 164, note *a*.

[b] 1804, January 17; Grierſon *a*-gainſt M'Gill. In this caſe both parties had joined iſſue on the merits; but that could not remove the objection,

§ 3. OFFENCES COGNISABLE BY THE SESSIONS.

THIS juriſdiction of the ſeſſions, indeed, is underſtood to be fixed law beyond doubt or controverſy. Accordingly, in numberleſs inſtances of proſecutions for petty thefts, and other delinquencies, occurring in the juſtice of peace records of the county of Edinburgh, the objection to the juriſdiction is taken entirely from the peculiarity of the particular caſe; its aggravated nature; the ſevere puniſhment concluded for, &c. as excluding it from the cogniſance of this magiſtracy. But *exceptio firmat regulam*," &c. Even in the heat of argument, it is not alleged that the ſeſſions are *in general* incompetent to take cogniſance of ſuch delinquencies [a].

OFFENCES of a more aggravated nature have, under certain circumſtances, been found competent before the juſtices: for example, thefts, which could not come under the denomination of pickery or pilfering, have been found competent to be tried before them when committed, by a ſervant againſt his maſter. This was carried very far in one caſe. The juſtices of the county of Linlithgow ſuſtained themſelves competent to the trial of a ſervant for breaking into his maſter's brewhouſe and cellar, and ſtealing wine. Their own idea of the magnitude of the offence, appears from the puniſhment which they inflicted. They ſentenced him to be repeatedly whipped, burned in the back with the common iron of the borough. Even in this aggravated caſe, the juriſdiction was ſuſtained by the court of juſti-

tion, if otherwiſe well founded. In the caſe of civil juriſdiction at leaſt, prorogation was found not to give juſtices of peace thoſe powers which they had not by law.

[a] From theſe records it alſo appears that the juſtices have ſometimes ventured to exerciſe a juriſdiction in more aggravated offences, and inflicted ſeverer puniſhments than fell within their powers: for example, at the inſtance of the public proſecutor and the private complainer, John Macdairie was indicted before the ſeſſions for the crime of ſtealing horſes; and being found guilty, was ſentenced to tranſportation forth of the kingdom to the plantations.—1704, November.

§ 3. OFFENCES COGNISABLE BY THE SESSIONS.

ciary. That part of the ſentence reſpecting the whipping was ordered to be put in execution [a].

But ſubſequent deciſions of the ſame high court have relieved us from the neceſſity of conſidering this caſe as an authority. If the crime be of ſuch magnitude as would require a jury-trial when committed by any other perſon, it cannot be competent before the juſtices (who do not employ an aſſize), merely becauſe it was committed by a perſon in the relation of ſervant. The thing muſt have limits. If a ſervant commits murder, or forgery, againſt his maſter, his ſituation of ſervant does not make it competent for the ſeſſions to take cogniſance of theſe capital crimes. The only criterion, however, as already mentioned, ſeems to be this, does the offence require a jury-trial, when committed by a perſon not a ſervant. With the trial of ſuch offences, though committed by ſervants, the ſeſſions ſhould not intermeddle. It is obvious, if they interfere at all, they are bound to ſee juſtice equally done betwixt maſter and ſervant. They pronounce decree againſt the maſter for payment of wages, as well as againſt the ſervant for performance of his ſervice. In like manner, whatever criminal offences are competent before the ſeſſions, when committed by a ſervant againſt his maſter, muſt be equally competent before them, when committed by the latter againſt the former.

The criminal juriſdiction of the ſeſſions, therefore, in the caſe of ſervants, extends not to offences of the heinous nature already mentioned; but is limited to leſſer delinquencies, ſuch as breach of truſt, embezzlement, &c. This appears founded in the words of the interlocutor pronounced by the court of juſticiary, in the caſe of a proſecution brought before the juſtices againſt a ſervant, for embezzling the profits of his maſter's farm. The lords found "the indictment did not

[a] July 13, 1739; Robert Dow.

§ 3. OFFENCES COGNISABLE BY THE SESSIONS.

" *contain a charge of theft, but of fraudulent concealment of hi*
" *maſter's goods;* and by fraudulent contrivances endeavour
" ing to prevent that concealment from coming to his mai
" ter's knowledge, and that ſuch a charge was competen
" to be tried by the juſtices of peace without a jury [a]," &c
In like manner, if a ſervant ſhould run off with a ſuit of hi
maſter's livery, this would not be the crime of theft; but, as
breach of truſt, would be cogniſable by the ſeſſions. Neithe
the interlocutor of the court, nor the pleadings in the caſe o
Tait, enable us to draw the line with preciſion betwixt thoſ
breaches of truſt which are competent, and thoſe which ar
not competent, before the ſeſſions. It certainly cannot b
ſtated that they are competent to take cogniſance of all th
various offences belonging to that deſcription, ſtill leſs t
puniſh thoſe of the higher denomination of ſwindling, wher
the original poſſeſſion has been obtained by fraud [b].

[a] 1776, February 25; Tait, ſervant to earl of Roſeberry.

[b] It would be in vain to attempt enumerating all the various deſcription of crimes which come under this denomination. A creditor who has his debtor's property in pledge with him, is not guilty of theft if he ſhall irregularly uſe or ſell it; for ſuch is his intereſt in the thing, that the owner would be guilty of a crime, and, as ſome allege, even of theft, in certain circumſtances, if he ſhould ſecretly withdraw it from his poſſeſſion.

The ſame alſo is the caſe of a factor, who runs off with the rents, after receiving them from the tenants. Indeed, this is a leſs ſtrong caſe than that above of Archibald Tait. In general, it ſeems to be true, of all perſons who are in a reſponſible ſtate as officers, and are intruſted, not with the care only, but the proper poſſeſſion of money, ſuch as caſhiers and tellers of banks, co lectors of taxes or parochial rate treaſurers of bodies corporate, judi cial factors, and the like, that the are not puniſhable as thieves, but a criminals of an interior order, for an diſhoneſty or malverſation in thei charge. In like manner, if a land holder, finding a ſtray animal in hi field, or a treaſure in his ground or wrecked goods thrown in upo his ſhore, or a paſſenger finding pocket-book upon the highway, whic has the owner's name marked in it or a hackney coachman finding parcel in his coach, which was lef there by a paſſenger, whom h ſome time before ſet down; if th holder in any of theſe caſes yielding to the opportunity and temptation ſhall keep the thing to himſelf, i ſeems not to amount to the crime o theft, becauſe there was no felonious intention or treſpaſs in the firſt, or

As they have the fixing of workmen's wages, rates of poſting, &c. ſo they are competent to take cogniſance of all unlawful combination, whether by maſters againſt ſervants, or the latter againſt the former, &c.; but this will be more properly noticed under the chapter on Police. § 3. OFFENCES COGNISABLE BY THE SESSIONS.

IV. IT only remains to mention the different puniſhments; an inquiry which none, who conſider the numberleſs unforeſeen events which a day may bring forth, and the infirmity of human nature, can view with indifference; neither character, nor providence, nor elevation in life, putting any man beyond the poſſibility of being ſuddenly involved in the imputation of guilt [a]. And the magiſtrate, on the other hand, unleſs he thoroughly underſtands the nature and extent of his powers, muſt be perpetually in danger of going aſtray; of either exceeding or falling ſhort of them: and thus either expoſing himſelf to danger, or the public to detriment. § 4. PUNISHMENTS.

THE two great ſanctions of law and command are reward and puniſhment. Theſe, it has been generally ſaid, are the two hinges upon which all government turns [b]; and both ſanctions are no doubt neceſſary that laws may be properly inforced. But whatever may have been imagined in Utopian conſtitutions, yet no code of human laws, actually in force, has ever gone farther than puniſhing tranſgreſſors [c]. The temporal magiſtrate threatens, but does not Reward and puniſhment, how far the ſanctions of human laws.

copying of it. The contrary ſeems to have been followed, with reſpect to the coachman, in the Engliſh caſe of William Winn; but on principles, obſerves Mr. Hume, which probably would not be followed in our practice. (Leache's caſes in crown law, No. 168. Hume, Crim. law, vol. i, c. 11.)

[a] Sir Michael Foſter's Crown law, preface, p. 3.

[b] Neque ſolum ut Solonis dictum uſurpem qui ſapientiſſimus fuit ex ſeptem; *Is rempublicam duabus rebus contineri dixit, præmio et pœna.* (Cic. ad Burt. Epiſt. 15.)

[c] "Although," ſays Dr. Swift, "we uſually call reward puniſhment, "the two hinges upon which all go- "vernments turn; yet I could never "obſerve this maxim to be put in

§ 4. PUNISHMENTS.

promiſe; for it is impoſſible to reward every one for obedience to the laws of his country. So far as depends upon the temporal magiſtrate therefore, the ſole ſanction of human law is puniſhment[a]; unleſs, at leaſt, we agree with Dr. Hutcheſon, in conſidering it "as a common reward; that "theſe who continue to obey them enjoy all the advantages "of civil ſociety[b]."

Puniſhment defined.

PUNISHMENT has been defined in general to be ſuffering inflicted on account of miſbehaviour[c]. And an ingenious writer remarks[d], that "it is from an abuſe of language "that we apply the word *puniſhment* to human inſtitutions;" meaning, that the prevention of crimes ſhould be the great object of the lawgiver; that vengeance belongeth not to men; that it is the end of civil laws not to revenge paſt, but prevent future, guilt.

Prevention of crimes, not revenge; the end of criminal juſtice.

Damage defined by lord Stair.

WHEN damage, (which lord Stair[e] defines to be the diminiſhing, or taking away, ſomething from another, which of right he had) is ſuſtained, the ſufferer is intitled to reparation. And thoſe criminal codes are ſo far erroneous which do not make the ſufferer's complete indemnification the firſt ſtep in the puniſhment.

BUT where the damage ariſes from delinquency, more is requiſite than merely indemnifying the individual of his pecuniary loſs; which will not always put either the injured individual, or the community, that alſo ſuffers by every

"practice by any nation except that "of Lilliput." (Gulliver's Travels, vol. i, p. 97.)

[a] Divine Legation, book i, § 2, where Dr. Warburton ſtates the argument at large, and ſhews the remedy provided for this neceſſary defect of human laws.

[b] Elements of Ethics.

[c] *Malum paſſionis quod infligitur ob malum actionis.* (Grotius de jure Belli et p cis lib. ii, c. 20, § 2.)

[d] Principles of penal law, c. 3 § 1.

[e] B. i, tit. 6, § 2.

violation of the law, "in as good a condition" (to uſe lord Stair's words) "as they were in before the injury [a]." Intereſted that the lieges do not tranſgreſs the law, the magiſtrate is intitled to chaſtiſe the delinquent with a view to his perſonal reformation [b]. An evil example has been ſet in ſociety; to counteract it the puniſhment muſt make the delinquent a warning to others. And the repeated, or extreme guilt of an incorrigible offender, may juſtly be puniſhed in ſuch a manner as will deliver the community from all further dread from him. In any of theſe three views, puniſhments, though going beyond pecuniary reparation, are juſt and proper [c]. § 4. PUNISHMENTS.

[a] Stair, lib. i, tit. 9, § 2.

[b] Chaſtiſement, as diſtinguiſhed from puniſhment, has in view only the reformation of the ſufferer.—(Dr. Hutcheſon's Ethics, b. iii, c. 8. § 8.) This, which has become an object of ſome attention of late, ought to be chiefly in view in the caſe of petty delinquents, who, if not made better, will certainly be made worſe, by puniſhment.

[c] *In vindicandis injuriis hæc tria leu ſequuta eſt, quæ princeps quoque ſequi debet, ut aut eum quem punit emendet, aut ut pœna ejus cæteros meliores reddat aut ut ſublatis malis ſecuriores cæteri vivant.* (Seneca de clem. lib. i, c. 28,) quoted by Grotius with approbation. (De jure Belli et pacis, lib. ii. c. 20, § 13.)

If what is ſtated in the text be correct, it would ſeem to ſuperſede the neceſſity of that diſtinction, which lord Stair has put betwixt *reparation* and *puniſhment*. "In reference to man "is the obligation of repairing his "damage, by putting him in as good "a condition as he was before the "injury. And this only is man's "part for himſelf: but the power of "exacting puniſhment is in God; "and as from and for him it is com-"mitted to man, it is but a miniſte-"rial power, and not diſpenſable at "man's pleaſure, and hath an obli-"gation whereby man ſtands bound "to God for doing his duty therein. "Though the poſitive laws and ac-"tions of men, and in ſome things "the poſitive laws of God himſelf, "may conſtitute a penalty, and em-"ploy it for the proper uſe of the "injured; yet it is not a proper pu-"niſhment that hath its force by "paction and poſitive law, and not "by the law of nature. The obli-"gation to puniſhment ariſing from "delinquence, and man's power and "duty to inflict the ſame, is a public "right: which, though naturally "it did concern every one, yet it is "now, with divine approbation, for "the moſt part devolved upon public "authority, which is ſaid to be a ter-"ror to evil doers, &c. By which, it is "clear, that the magiſtrate, as he ex-

§ 4. PUNISHMENTS.

BUT this threefold diviſion we ſhall not adopt as a rule for arranging the ſeveral puniſhments preſently known in our practice; many of which are recommended by more than one of thoſe views; ſome of them by all the three.

Capital and not capital.

THE moſt obvious diviſion of puniſhments, and which is the firſt in our elementary books, is into capital and not capital. By capital, in the language of the civil law, is meant

" ecuteth revenge, doth it not of or " from himſelf, nor for nor from the " people, as their proper right or " power of exaction; but therein, as " he is the miniſter of God, he doth " it for and from God," (Book i, tit. 9, § 2.) Lord Stair, if we may ſay this of ſo great a man, has not here expreſſed himſelf with that preciſion and deep diſcrimination, for which his lordſhip (our Scottiſh Hooker) is ſo deſervedly celebrated. Puniſhment, in one ſenſe, never can belong to the magiſtrate; in another ſenſe it belongs to him on the ſame footing with the right of inforcing reparation. If by puniſhment we mean taking vengeance on the individual, according to his ſinfulneſs and moral depravity, this power is not only not " man's part for him- " ſelf," but never did belong to him; neither to the individual, in the natural ſtate, nor to the magiſtrate ſince the inſtitution of government. It is limited *foro poli* alone, and never was attempted by human power, without producing the worſt and moſt iniquitous conſequences. But if by puniſhment we mean chaſtiſing miſdeeds, as they are injurious to the *perfect* rights of others, and inflicting ſuch pains and penalties on the offenders as may be neceſſary for the protection of the community; this power, as much awarding pecuniary reparation, " man's part for himſelf." Reparation, in the proper ſenſe of the word includes it, as being requiſite (to use his lordſhip's expreſſion) for putting the ſuffering individual and the community in as good a condition as they were in before the injury. Hence in the phraſeology of all nations, the delinquent is ſaid, by his crime, to incur a debt, which he diſcharges by his puniſhment. Hence, in Latin, *luere panam*, *luere peccata*. In illuſtration of the ſame idea, Grotius quotes the expreſſion of St. Auguſtin, *Si non reddit faciendo quod debet, reddet patiendo quod debet.* In puniſhing any crime therefore, how ſeverely ſoever, yet if it be only ſuitable to the crime under all circumſtances, the magiſtrate truly exerciſes no other right than that of obtaining reparation to the individual and ſociety; and as the right originally belonged to the individual, ſo, after the inſtitution of government, the magiſtrate (as lord Stair well expreſſes it in another paſſage) " ſtands in the place of the " men to God, to execute that re- " venge which they themſelves were " naturally obliged unto."

those which defranchiſe a man of his citizenſhip, as well as those which take away his natural life [a]. "But with us," (obſerves ſir George Mackenzie) "theſe crimes are only "called capital which are puniſhed with loſs of life or "limb [b]." § 4. PUNISHMENTS. Capital puniſhments defined.

CAPITAL puniſhments have ever made a conſpicuous figure in criminal codes; "although," (obſerves an eminent writer) "the infliction of death is not to be regarded in "any inſtance as a mode of puniſhment, but merely as our "laſt melancholy reſource in the extermination of thoſe, "whoſe continuance among their fellow-creatures is be-"come inconſiſtent with the public ſafety [c]." Some have gone the farther length of denying their lawfulneſs in any caſe. No man, it has been ſaid, can transfer or forfeit to the magiſtrate that right over his own life which he does not poſſeſs himſelf. But it is in *right of the ſufferer* that the magiſtrate puniſhes the offender; from whoſe want of power over his own life, it certainly does not follow that he may not be juſtly put to death, if his miſdeeds render that extreme meaſure indiſpenſable to the perſonal ſafety or preſervation of the *perfect* rights of other men. DEATH.

So far, no doubt, is true, that neither death, nor any other ſevere puniſhment is juſtifiable, if the caſe admits of a more lenient remedy. "For nothing but the evident reſult of ab-"ſolute neceſſity can authoriſe the deſtruction of mankind "by the hand of man [d]."

BUT whatever may be the difference of opinion touching the uſe of capital puniſhment at all; at leaſt in other caſes

[a] *Illa (capitalis pœna) vel vitam naturalem vel caput civile tollit.* (Heineccii. Inſtitut. lib. iv, tit. 17, § MCCCXXXVI.)

[b] Criminal law, part i, tit. 2, § 2.

[c] Principles of Penal law, c. iii, § 2.

[d] Principles of penal law, ibid.

§ 4. PUNISHMENTS—DEATH.

beſides murder and treaſon, it muſt be univerſally admitted that our practice, in the mode of inflicting it, is agreeable to the beſt philoſophy, and the opinions of the moſt liberal and enlightened juriſts; preventing crimes, and enforcing obedience to the laws, no leſs ſucceſsfully than other plans of executive juſtice, which cannot be peruſed without ſhuddering, at the very idea of thoſe miſeries which men, with unrelenting ingenuity, have deviſed for each other [a].

Mode of infliction.

But the puniſhment of death, with us, "in later times, has "always been inflicted in one way, that of hanging by the "neck on a gibbet, without any aggravation of bodily ſuf-"fering; farther than that in caſes of cruel and atrocious "murder, it has been ſometimes ordered to ſtrike off the "right hand before ſuſpenſion [b]." And in the caſe of treaſon, the law ordains the offender to be executed with many circumſtances of indignity and horror; but the king uſually remits the whole puniſhment, except beheading; which is not executed till he be dead [c].

Diſſection of the body.

Our practice employs other methods of aggravating the ſeverity of the puniſhment. In caſes of murder, the dead body is appointed to be delivered to a ſurgeon for diſſection, unleſs the court ſhall order it to be hung in chains [d].

Hanging in chains.

[a] Principles of penal law, c. iii. "In ſome countries it has been uſual "to ſew up criminals in the warm "ſkins of beaſts, and in this condi-"tion to expoſe them to wild dogs; "in others, the limbs are torn aſun-"der by horſes; in others, recourſe "is had to crucifixion, burnings, "flayings, boilings, famiſhings, im-"palements, and other modes of de-"ſtruction, equally ſhocking to de-"cency and humanity." *Ibid.* And in a ſubſequent ſection of the ſame chapter, this humane writer adds, "We may pronounce it then contra-"ry both to ſentiment and morality, "to aggravate capital executions by "any circumſtances of terror or pain "beyond the ſufferings inſeparable "from a violent death." § 3.

[b] Hume's Criminal law, vol. iv, c. 17, p. 362.

[c] Women convicted in all caſes of treaſon, ſhall receive judgment, to be drawn to the place of execution, and there to be hanged by the neck till dead. 30 Geo. II, c. 48.

[d] 25 Geo. II, c. 37.

§ 4. PUNISHMENTS—DEATH.

"And by cuſtom out of mind, every capital ſentence is "attended with a farther conſequence, the confiſcation, or "eſcheat, as we call it, of all the convict's moveable goods "and ſubſtance to his majeſty's uſe; to which effect the "ſentence bears a general declaration, and an order and "authority to the proper officer to collect and bring in the "effects [a]."

Eſcheat of moveables.

AFTER the explanation already given of the nature of the criminal juriſdiction of the ſeſſions, it ſeems unneceſſary to add that they have no power to inflict capital puniſhment; which indeed properly belongs to the ſupreme criminal court, the excluſive judges of the four pleas of the crown [b]; although ſheriffs, and thoſe magiſtrates of boroughs who have rights of ſheriffdom alſo, being competent to the trial of theft, houſe-breaking, and hameſucken, may puniſh ſuch offenders capitally.

What judges can inflict it.

BUT though the ſeſſions have no power of inflicting the puniſhment of death, it concerns individual juſtices to know what crimes are ſo puniſhable. The act 1661 particularly calls upon them to examine and commit heinous and capital offenders for trial. In all caſes priſoners may make demands upon them to be liberated on bail; the refuſal whereof, in offences not capital, will ſubject them in damages to the individual; as granting it in capital offences will to the public. The ſeveral crimes, therefore, which may be puniſhed capitally, ſhall be mentioned, according to Mr. Hume's very accurate claſſification, with ſome change in the general arrangement.

FIRST, crimes againſt religion;—as blaſphemy [c], ſaying of maſs [d].

In what caſes it may be inflicted.

Religion.

[a] Hume's Criminal law, vol. iv, c. 17, p. 364.

[b] Murder, robbery, rape, and fire raiſing.

[c] 1661, c. 21.

[d] By 1567, c. 5.

§ 4. PUNISHMENTS—DEATH.

State.

SECOND, crimes againſt the ſtate.—Treaſon; coining copper money [a]; uttering falſe Britiſh coin, in caſe of a *third* offence, or of having been convicted before as a counterfeit utterer [b]; counterfeiting foreign coins current by conſent of parties [c]; inliſting or entering as a ſoldier with any foreign prince or ſtate, without his majeſty's leave; or procuring any ſubject of his majeſty ſo to inliſt or enter; or hiring any ſuch ſubject with intent to cauſe him ſo inliſt and enter; or procuring any ſuch ſubject to embark or go beyond ſea with intent ſo to inliſt [d].

Public trade.

THIRD, offences againſt public trade.—Piracy; plundering a ſtranded veſſel, if any human being either be in the veſſel alive, or though he may have left the veſſel for a time, yet continues his care over it; wilful deſtruction of ſhips, with intent to injure the owners or underwriters; ſmuggling, if *three* or more armed with fire-arms, or other offenſive weapons, aſſemble, in order to be aiding in the exportation of wool, or other goods, not allowed to be exported; or in running, landing, or carrying away, prohibited or uncuſtomed goods; or in the relanding of goods which have been ſhipped on debenture for exportation; or in the reſcuing the ſame, after ſeizure, from any officer of his majeſty's revenue; or in the reſcuing or hindering to apprehend any perſon who has been guilty of any of the above offences [f]; paſſing with prohibited or uncuſtomed goods, or having the face blacked, or wearing any vizard or maſk, or other diſguiſe [g]; maiming, or dangerouſly wounding, an officer of exciſe or cuſtoms, when attempting to go onboard

When it may be inflicted.

[a] 15 Geo. II, c. 28; 11 Geo. III, c. 40; doubtful if theſe ſtatutes apply to Scotland. Hume, vol. ii, c. 28, p. 506.

[b] 15 Geo. II, c. 28; the ſame doubt here. See ibid.

[c] 14 Eliz. c. 3. Ibid.

[d] 9 Geo. II, c. 3; 29 Geo. II, c. 17.

[e] 11 Geo. I, c. 12; 11 Geo. I, 29; 29 Geo. III, c. 46.

[f] 19 Geo. II, c. 34. Hume, Criminal law, vol. ii, c. 24, p. 373.

[g] 19 Geo. II, c. 34, No. i.

any veſſel within the limits of a port; or to maim, dangerouſly wound, or ſhoot at him, when onboard ſuch veſſel, and in the execution of his duty; maliciouſly ſhooting at any veſſel of the navy, or in the ſervice of the cuſtoms or excife, within the limits of a port, or within four leagues of the coaſt; or maliciouſly wounding or ſhooting at any officer of the navy, cuſtoms, or exciſe, in the execution of his duty [a]. § 4. PUNISHMENTS—DEATH.

FOURTH, offences againſt the public police and economy.—Inceſt, notour adultery [b], Venus nefandum, and that of being Egyptians [c]. Public police and economy.

FIFTH, forning, a mob beginning to demoliſh or pull down a houſe [d], a mob to the number of twelve, remaining an hour after proclamation to diſperſe [e]; duelling, whether either death or wounds take place or not [f]. The public peace.

SIXTH, offences againſt the courſe of juſtice.—Striking or hurting any judge when ſitting in judgment [g]; ſtriking or hurting any perſon in the outer-houſe, (or tolbuith, as it is called in the act), during the ſittings of the lords of ſeſſion, or in preſence of the juſtice and his deputes, (and now the lords of juſticiary) when ſitting in judgment [h]; invading or purſuing any of "his highneſs ſeſſion," if it be on account of ſervice done to the king in that capacity [i]; perjury, in a capital trial, whereby an innocent perſon may have been wrongfully put to death [k]. Againſt the courſe of juſtice.

[a] 24 Geo. III, c. 47.

[b] 1563, c. 74.

[c] 1609, c. 13. But Mr. Hume obſerves that a lenient conſtruction ſeems ſo far to be adopted, that ſome actual guilt is required in aid of the evil fame. Crim. law, vol. ii, c. 22, p. 341.

[d] Riot act, 1 Geo. I.

[e] Ibid.

[f] 1600, c. 12.

[g] 1593, c. 177.

[h] Ibid.

[i] 1604, c. 4. Whether this relates to the court of ſeſſion or to the privy council, is doubtful. Hume, Crim. law, vol. ii, c. 15, p. 205.

[k] Formerly aggravated caſes of perjury were capitally puniſhed; and

§ 4. PUNISHMENTS—DEATH.

SEVENTH, offences againſt the perſon.—Murder [a], rape, hameſucken, beating or curſing parents [b].

Againſt the perſon.

Againſt property.

EIGHTH, offences againſt property.—Theft [c], ſtealing the mail [d], breaking dove-cots, cunningaires or parks, on the third fault, by a perſon not reſponſible for the pecuniary pains [e]; ſtealing of bee-hives [f]; robbery; houſe-breaking; ſtealing linen, cotton, calico, or other ſtuff, to the value of ten ſhillings, from any bleaching-croft, or from any ground, place, or building, made uſe of by any calico-printer, bleacher, &c. for printing, whitening, bleaching, or drying the ſame [g]; wilful fire-raiſing, or ſetting on fire another's houſe, corns, coal-heugh [h], forgery.

RETURNING from tranſportation is alſo made a capital certification by the ſtatute 25 Geo. III, c. 46.

BANISHMENT.

EXILE, or baniſhment, like *exilium*, the general term

perjury in a capital trial, by which an innocent perſon may loſe his life, Mr. Hume obſerves, is a ſpecies of murder or conſpiracy; but this conſtruction has not been adopted in our law, as is obſerved by the ſame author, who inclines himſelf to the lenient conſtruction. Vol. i, p. 283.

[a] What caſes of homicide amount to this crime, and what are either intirely excuſeable, or puniſhed arbitrarily, ſee illuſtrated at large by Mr. Hume, Crim. law, vol. i, c. 6.

[b] 1661, c. 20.

[c] It reſts with the diſcretion of the court what, under all the circumſtanſtances, amounts to *furtum grave*, to require capital puniſhment.

[d] 5 Geo. III, c. 25; and 7 Geo. III, c. 50.

[e] 1474, c. 60; 1535, c. 13; 1587, c. 59; and 1579, c. 84.

[f] 1535, c. 13, and 1555, c. 58. But our antient law reſpecting thefts of animals not completely domeſticated, is rendered doubtful by other ſtatutes, (1503, c. 69, 1607, c. 3.) which breathe a leſs ſanguinary ſpirit, denouncing only pecuniary or petty corporal pains.

[g] 18 Geo. II, c. 27, which gives the judge the diſcretionary power of ſubſtituting the puniſhment of tranſportation for 14 years.

[h] 1592, c. 148; 1426, c. 75; 1528, c. 8. Theſe ſtatutes made the crime treaſon; but by the 7 Anne, c. 21, it was again lowered to the ordinary condition of a capital offence. Hume, vol. i, c. 4, p. 176.

among the Romans, contains ſeveral modes of puniſhment of different degrees of ſeverity [a].

§ 4. PUNISHMENTS— TRANSPORTATION.

THE kind of exile greateſt in degree, and like the Roman *deportatio in inſulam*, is tranſportation; by which the delinquent is ſentenced to be tranſported to ſuch place beyond ſeas, as his majeſty, with advice of the privy council, ſhall think fit, for life, or a certain number of years, under certification of death, in caſe of his being found at large within the kingdoms, without ſome lawful cauſe; and alſo his ſervices adjudged to ſuch perſon as ſhall contract for the due performance of ſuch tranſportation; the time of his confinement in gaol, under ſuch ſentence, being reckoned in diſcharge of the term of exile [b].

THE certification, in caſe of the convict's return to Scotland before the expiration of the term, was anciently death. About the middle of the laſt century it became the practice to commit the culprit to the gaol from which he had been carried abroad, and to ſcourge him on the next market-day after his commitment; and on the firſt market-day of every ſucceeding month, until an opportunity ſhould offer of tranſporting him. But the ſtatute 25 Geo. III, c. 46, made the certification again capital. "He is liable to ſuffer death, "if he break gaol after ſentence to avoid tranſportation, "and be found at large within theſe realms, or any of "them [c]."

[a] *Secundum Marcianum* (ſays Voet) *exilium triplex eſt, aut certorum locorum interdictio; aut lata fuga ut omnium locorum interdicatur præter certum locum; aut in inſula vinculum id eſt relegatio in inſulam.* (L. Exilium, 5 ff. De relegatis, &c. Ad Pandectas, lib. xlviii, tit. 22, § 2.) See a more particular explanation of the different kinds of exile among the Romans, in Dr. Hill's Synonimes, &c. p. 341.

[b] 25 Geo. III, c. 46, being the laſt ſtatute regulating this matter.

[c] Hume, Criminal law, vol. iv, c. 17, p. 368. "It ſeems, however," adds Mr. Hume, "to be doubtful,

§ 4. PUNISHMENTS—TRANSPORTATION.

THIS punishment is appointed by special statute for various offences; for example, opposing excise and customhouse officers [a]; and may be inflicted by the discretion of the high court of justiciary in cases appearing to merit it.

BANISHMENT FROM SCOTLAND.

ANOTHER species of exile is banishment from Scotland; or (as the sentence has sometimes been) from his majesty's "hail dominions [b]. "It has been the ordinary course for "the execution of this sentence, that the convict is charged "with the care of it himself, being relieved from prison, "and allowed a reasonable space of time to settle his af- "fairs and depart; after which, if he be again found, he "shall suffer the certification of the sentence. This has "been different at different times. From the beginning till "the middle of the last century, and even later, the ordi- "nary stile of the prisoner's enactment was *under the pains* "*of deathe* [c]." But this excessive severity was afterwards mitigated [d]. For many years the penalty has uniformly been imprisonment, and whipping on the first market-day after conveyance to the gaol where the person has been at the date of his sentence [e].

How executed.

Certification in case of being found in the country.

Severity of the certification mitigated.

BANISHMENT and transportation are punishments un-

[a] by the words of the act, whether "this high denunciation does not ap- "ply to those offenders only, who "have had judgment of transport- "ation in pursuance of trial and con- "viction of a crime, or who have "entered into a contract to tran- "sport themselves, and not to such "who are ordered to be transport- "ed, on their own petition, without "trial."

[a] 24 Geo. II, c. 40; 8 Geo. I, c. 18.

[b] Hume, Crim. law, vol. iv, c. 17, p. 369.

[c] Ibid.

[d] "I cannot dismiss this subject, "without expressing a doubt relative "to the propriety of punishing by "death a return from transportation, "especially where the original of- "fence was not capital. It certainly "is not justified by necessity; and "is not such severity inconsistent "with that leading principle which "forbids penal laws to attack the na- "tural sentiments of the heart?— "*Duri est non desiderare patrium.*" Principles of penal law, c. iv, § 5.

[e] Hume. Ibid.

known in the common law of England. It is ſaid that the former was firſt introduced there as a puniſhment by the 39th of Elizabeth, c. 4; which enacted, that "ſuch "rogues as were dangerous to the inferior people ſhould "be *baniſhed* the realm;" and that the firſt ſtatute where the latter occurs, is the 18th Cha. II, c. 3, which gives a power to the judges, "at their diſcretion, either to execute, "or *tranſport* to America for life, the Moſs troopers of "Cumberland [a]."

§ 4. PUNISHMENTS—BANISHMENT FROM SCOTLAND.

Is it a common law puniſhment in England?

When introduced there.

BANISHMENT is ſo far injurious to the community, as the kingdom is deprived of a ſubject, and renounces all the emoluments of his future exiſtence. But it has ever been the practice of all ſtates to retain their right to obedience from the baniſhed member; although that right might appear to be diſcharged when he was excluded from the protection of the laws, obedience and protection being reciprocal. "But it was neceſſary all ſtates ſhould act in "this manner when they inflicted exile as a puniſhment; "it being no puniſhment, but by accident, when the claim "to ſubjection was remitted with it. They had a *right* to "act thus; becauſe it was inflicted on an *offender*, who, "by his very offence, had forfeited all claim of advantage "from that *reciprocal condition* [b]."

Expediency of it as a puniſhment.

Does the ſtate retain its juriſdiction over the exile?

Reaſon of this.

THIS puniſhment is enacted by ſtatute to various offences; as celebrating a clandeſtine marriage [c]; or any concern in giving, ſending, or accepting, a challenge, though no combat ſhould enſue [d].

In what caſes inflicted by ſtatute.

BANISHMENT from the realm, and tranſportation, are pu-

[a] Dr. Chriſtian's Note 14 on Blackſtone, B. i, c. 1, § 2, p. 137.

[b] Div. Leg. b. i, § 2.

[c] By the act 1661, c. 34.

[d] 1696, c. 35.

§ 4. PUNISHMENTS—BANISHMENT FROM SCOTLAND.

niſhments peculiar to the ſupreme court, neither competent to the ſeſſions of the peace, nor yet to judges ordinary; although the latter may, in ſome caſes, inflict the puniſhment of death [a].

What judges can inflict it.

As the court of juſticiary baniſhes criminals from the kingdom, ſo inferior judges baniſh leſſer delinquents from their reſpective bounds, whether ſhire or borough [b]. This ſpecies of exile ſeems to be unknown in the practice of our enlightened neighbours. Neither indeed (at leaſt as an ordinary puniſhment in inferior courts) does it appear to be quite in uniſon with thoſe excellent ſchemes of criminal policy deviſed by our ancient legiſlature for the confinement of petty delinquents in workhouſes, with a view both to the reformation of the *puniſhed*, and to the benefit of the *public*, by their induſtry. But magiſtrates, though endowed with ample powers for carrying thoſe wiſe plans into execution, ſhewed themſelves early proner to adopt the eaſier methods of corporal chaſtiſement, or, as it was imagined, the more effectual method of ridding themſelves of the culprit at once, by expelling him from their territories.

BANISHMENT FROM BURGH OR SHIRE.

THERE ſeems reaſon, however, to doubt how far this view of

[a] I find a judgment of juſtices of the peace, adjudging one John Macdowall as guilty of ſtealing horſes, "to be "tranſported from the kingdom to "the plantations." The meeting too was attended by names of firſt reſpectability; and no leſs a perſon than lord Fountainhall preſided. (Records of the juſtices of the county of Edinburgh. Sed. 1704, Nov. 4.)

[b] The greater puniſhment muſt include the leſs. The court that can baniſh from the kingdom in general, muſt have the power of baniſhment from any one place of it. Accordingly the high court of juſticiary have, on particular occaſions, inflicted this leſſer ſpecies of *exile*. Thus in the caſe of an aſſault and battery, Mr. Hume takes notice of their baniſhing one of the parties from the particular pariſh, where both he and the proſecutor dwelled. (1723, July; John Higgins. Hume, vol. iv, c. 17, p. 371.)

§ 4. PUNISHMENTS—BANISHMENT FROM BURGH OR SHIRE.

the thing was correct. "In Ruſſia, indeed, baniſhment from "one place of the kingdom to another, is made ſubſervient "to political utility [a]." The criminal is ſeverely puniſhed when he is baniſhed to Siberia; and the public is benefited by every increaſe of the population of thoſe deſolate regions. But when our counties of Fife, and Perth, and Forfar; or the boroughs of Edinburgh, and Stirling, and Glaſgow, let looſe their reſpective banditti on each other, what advantage ariſes either to thoſe places in particular, or to the country in general? Certain however it is, that ſheriffs and magiſtrates of boroughs are in the practice of inflicting this puniſhment; although the improving ſpirit of the preſent age has turned the public attention to ſome attempts to carry into execution the plans of our ancient parliaments for confining and employing delinquents.

THE ſeſſions of the peace have not been in the general practice of inflicting this puniſhment. In ſome particular counties it has been occaſionally inflicted. And when that exerciſe of power came under the review of the court of juſticiary, in the caſe of Tait, mentioned above, who was ſentenced by the juſtices of the ſhire of Linlithgow to be puniſhed with impriſonment, pillory, and baniſhment, for ever from the county, the ſentence was affirmed, ſo far as reſpected impriſonment for one month, and the baniſhment. The court found, "that ſuch a charge," (concluding for baniſhment from the county, as well as impriſonment) "was com-"petent to be tried by the juſtices of peace without a jury." So therefore ſtands the law.

BUT this does not impoſe any neceſſity upon juſtices to inflict that puniſhment, whether expreſsly concluded for or not. In order, therefore, to the proper exerciſe

[a] Principles of penal law, c. 4.

§ 4. PUNISHMENTS—BANISHMENT FROM BURGH OR SHIRE.

of their own diſcretion in this matter, it may be proper to underſtand, that this puniſhment of baniſhment from the county neither is, nor ever has been ſanctioned, by the general practice of the ſeſſions of the peace. On the contrary, by far the greater proportion of the ſeſſions employ no puniſhments except fine and impriſonment; the puniſhments ſpecified by the general ſtatutes, and the ſafe and conſtitutional modes of repreſſing ſuch petty offences, as chiefly conſtitute the criminal juriſdiction of this magiſtracy. It is not uſed at all in more than eight or nine counties; and in the majority even of theſe never, unleſs upon the defender's application. In very few counties, therefore, is baniſhment from the diſtrict conſidered, and occaſionally inflicted, by the ſeſſions as one of the ordinary puniſhments[a].

Not in general practice as a puniſhment uſed by the ſeſſion.

BEFORE, then, any juſtices of peace reſolve to alter this general practice of the ſeſſions, and follow the example of that judgment of the ſeſſions in the caſe of Tait, which was altered by the court of juſticiary in ſeveral points, as erroneous and ſevere, although it was confirmed as to baniſhment from the county, it may be proper to reflect, 1*mo*, that the practice, as above ſtated, ſeems quite agreeable to the ſpirit and words of the general ſtatutes 1617 and 1661, wherein baniſhment from the county occurs not as a

[a] In the year 1783, on occaſion of three bills of ſuſpenſion, two from the ſheriff, and one from the magiſtrates of Edinburgh, of libels, at the inſtance of the procurator-fiſcal, concluding for a corporal puniſhment, ſuch as whipping, pillory, and impriſonment, &c. the juſticiary clerk, by order of the court, made inquiry into the practice of thoſe juriſdictions throughout Scotland. The reſult, with which I have been favoured, is printed in Appendix III.

As no report was made touching the practice of juſtices of peace, to whom the caſes then depending did not relate, the following query, among others, was tranſmitted, to the clerks of the peace: "are the juſtices "in your county in the practice of "puniſhing by fine and impriſon-"ment; or do they ever whip, or "baniſh, the county; or puniſh by "the ſtocks, or the pillory?" It is gratifying to learn, from the ſubſcribed anſwers of the reſpective clerks, that the practice is as ſtated in the text.

§ 4. PUNISHMENTS—BANISHMENT FROM BURGH OR SHIRE.

punishment. On the contrary, throughout thoſe acts, the words *punish* and *fine* ſeem to be uſed ſynonimouſly. And the clauſe intruſting juſtices of peace with the execution of various ſtatutes, which contain ſevere puniſhments when executed by judges ordinary, expreſsly declares, "that the puniſhment "to be inflicted by them" (juſtices of peace) "ſhall be a "pecuniall ſum, anſwerable to the circumſtances of the caſe "and quality of the offenders [a]." *2do*, it deſerves conſideration, whether the baniſhment of a man from his native county or city; the ſeat of his profeſſional induſtry; of his friends and choſen circle of ſociety, be not a puniſhment of ſuch ſhape and degree as ſhould not be hazarded by a judicature intruſted with the cogniſance of petty delicts only, which do not require a jury-trial.

A LEGISLATOR of antiquity puniſhed all crimes capitally; but a ſcale of puniſhments, each ſuitable as nearly as poſſible to the nature of the crime, has been more generally approved of. In many caſes, it would neither be proper to put the offender to death, nor yet to expel him from the community. Other puniſhments therefore, touching his purſe or his perſon, have been employed in all ages.

INFAMY.

WE ſhall firſt conſider the puniſhment of infamy;—the declaration of his being a baſe and infamous perſon, by which he is diſabled to enjoy honour, or place, or truſt, or to be received as a witneſs on his oath. This puniſhment is appointed by ſpecial ſtatutes for certain crimes; as bigamy [b], perjury [c], ſubornation [d], wilful error on aſſize [e], bribery in a judge [f], and ſome others. "Likewiſe in ſeveral inſtances, "without the poſitive direction of ſtatute, the ſupreme

[a] Appendix I, p. xviii and liv.

[b] Queen Mary's 1ſt parl. 1551, c. 19.

[c] 1555, parl. 6, c. 47.

[d] Ibid.

[e] James III, 1475, c. 63.

[f] James VI, 1579, c. 91.

§ 4. PUNISHMENTS—INFAMY.

" courts of juſticiary and ſeſſion, have juſtly applied this " *ſtigma* by ſpecial declaration of their ſentence, in the caſe " of thoſe offences to which, it ſeems, a ſuitable reproof, " ſuch as the falſehood or groſs malverſation of perſons in " ſituations of public truſt [a]."

IT need ſcarcely be obſerved, that the puniſhment of infamy cannot be inflicted by the ſeſſions of the peace. So much the contrary indeed, that a man who had been publicly whipped, in virtue of a ſentence of the juſtices, was not found diſqualified for being a witneſs. " The court over-ruled the " objection; being of opinion, that no man could be de- " prived of his good name by the ſentence of an inferior " court, unleſs it proceeded on a previous conviction by a " jury [b]."

INFAMY is likewiſe the legal conſequence of ſcourging, and other corporal puniſhments, " which conſiſt chiefly in " their ignominy, or the open expoſure of the culprit to con- " tempt and deriſion, and to the public knowledge as a baſe " and infamous perſon; though, in moſt of them, he ſuffers " alſo ſome degree of bodily diſtreſs [c]." Legal infamy follows ſuch puniſhments, " when they are inflicted in purſu- " ance of conviction by the verdict of a jury [e]." Legal infamy is not removed by the king's pardon [f].

PILLORY.

THE pillory is the principal of this claſs of puniſhments; " *eſt ſupplicii machina ad ludibrium magis quam ad per-* " *nam* [d]." " It appears however, from the barbarous " Latin name *colliſtrigium*, or *ſtretch-neck*, that it was con-

Is the infamy or the pain chiefly in view?

[a] Hume, vol. iv, c. 17, p. 377.
[b] Maclaurin, p. 725.
[c] Hume, vol. iv, p. 375.
[d] Spellman's Gloſſary, v. *Pilloria*.
[e] Hume, vol. iv, p. 377.
[f] See below, chap. 6, § 5.

"ſtructed formerly, in ſome meaſure, for the bodily un- "eaſineſs, as well as the ſhame and contempt of the ſuf- "ferer[a]." § 4. PUNISHMENTS—PILLORY.

IT appears not an unmerited compliment to the humanity of our criminal law, to bring under this claſs the other corporal puniſhments alſo, none of them being inflicted in ſuch a manner as if the preſent pain were chiefly in view.— Thus, in cutting out the tongue or ears, or burning the cheek or back, cutting the hand, &c. (none of which have been for ſome time uſed), the preſent pain during thoſe operations is leſs in view than the diſgrace, which the culprit muſt carry about along with him. Corporal puniſhments more for infamy than torture.

NEITHER, perhaps, need we except even the puniſhments of whipping or ſcourging, when inflicted by the criminal magiſtrate. SCOURGING, &c.

IN the army, again, where it ſeems to be inflicted with a view to the pain chiefly, and to be unattended with thoſe infamous diſqualifications which attach to its judicial infliction, the regimental ſurgeon invariably attends to ſtop the executioner on the firſt appearance of danger. But the peremptory and literal manner of executing judicial ſentences admits not of any ſuch proviſion. This alone is ground for believing it to be the ſpirit of our law that magiſtrates ſhould keep ſo far within the moſt diſtant poſſibility of danger, as to leave to the puniſhment little ſting except the diſgrace. The leſſer pain which attends the judicial infliction is compenſated by its conſequence of legal infamy. In the caſe mentioned above, from Mr. Maclaurin, it appears that the puniſhment would have diſqualified the witneſs, had it not been inflicted by juſtices of peace without a jury.

[a] Hume, v. iv. c. 6.

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

JUSTICES of peace will hardly appear to have any powe inflicting the corporal [a] punishments we have now been a tioning, if the thing is to be regulated on general princi It was unlawful to scourge a Roman citizen uncondemn The rights of the British subject are no less sacred. And common law recognises no criminal condemnation involv such consequences, without the verdict of a jury.

Whipping not infamous, if without a jury-trial.

FARTHER.—Legal infamy, the ordinary consequenc such punishments, did not, we have seen above from the reported by Mr. Maclaurin, attach even upon a public so ging through the streets, in virtue of a sentence of just of peace, without a jury. The court of justiciary expressed, in pretty intelligible language, their doub the legality of inflicting such a punishment without a j In this view it appears to be understood by the emi counsel who reports the case. Indeed, without mean the ordinary consequence of legal infamy to take place Such punishment necessarily infamous in *point of fact.* scarcely seems proper or consistent to inflict a punishmen which, as it exhibits the culprit a public spectacle of sion and contempt, it is utterly impossible to prevent *in* and *disgrace* from attaching *in point of fact.*

Case of Piscatore in point.

THIS is not all. We have already seen from the cas Piscatore, that neither justices of peace, nor other infe judges, without a jury, are competent to the trial of any fence above the description of *leviora delicta*, or *petty del* even to the effect of *pecuniary punishment* alone. Indepe ent of the punishment altogether, the conviction of greater offence appeared too serious an evil for any Br subject to suffer without the verdict of his peers. So te is our criminal law respecting the feelings and characte

[a] *Corporal* punishments, in the language of our law, includes imprisonment. See below, p. 207, note 6; but in this inquiry I understand whipping and pillory.

individuals. But the limited ſtatement in the libel will be of little avail if the puniſhment be unlimited; it will be ſmall conſolation that the charge is trifling and petty, if the puniſhment be great, infamous, irreparable. The only reaſonable ground of diſtinguiſhing petty from other delicts is, that in the former the intereſt involved is inconſiderable, which cannot be conſidered to be the caſe where the ſtake exceeds fine or impriſonment.

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

THE ſpirit and reaſon therefore of the judgment in the caſe of Piſcatore extends to this caſe alſo. This in particular appears from the manner in which it is reported by Mr. Maclaurin (afterwards lord Dreghorn), who could not well miſtake the opinions of the court delivered in ſo remarkable a caſe, when he was in high conſideration at the bar.—"This practice," (of inflicting ſevere arbitrary puniſhments of baniſhment, whipping, and pillory, without a jury-trial) ſays he, "was moſt incongruous and improper: incongruous, becauſe the juſticiary, the ſupreme criminal court of the country, cannot inflict the ſmalleſt puniſhment without a previous conviction by a jury; improper, becauſe it holds either that the perſon of a Britiſh ſubject may be held very cheap, or that jury-trial is not a valuable privilege. Expediency may perhaps require that inferior magiſtrates ſhould have the power of fining and impriſoning for petty offences without the intervention of a jury; but to allow them to inflict corporal puniſhments, without a previous conviction by a jury, is quite inconſiſtent with the ſpirit of our conſtitution. *It is therefore with great pleaſure I give an account of Piſcatore's caſe, in which the juſticiary pronounced a judgment diſapproving of this practice*[a]."

Incongruous that petty courts ſhould have powers not entruſted to the ſupreme.

BUT though the practice, at leaſt of the juſtice of peace

Deciſion of ſupreme court.

[a] Maclaurin, p. 723.

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

and ſheriff courts has been, in general, guided by ſuch conſiderations, yet thoſe judges, as well as magiſtrates of boroughs, have, on ſome occaſions of conviction, without a jury-trial, not ſcrupled to inflict the puniſhments of ſcourging, pillory, &c.

SUCH judgments have been brought under review of the ſupreme courts with various ſucceſs. Sometimes the bills of ſuſpenſion and advocation have been ſimply refuſed; ſometimes the corporal puniſhment has been altogether remitted[a]; ſometimes it has been remitted in part. Thus a ſentence of a meeting of a ſeſſions of the peace, already mentioned, adjudging Robert Dow to be impriſoned for five months, to be burned in the back, baniſhed the county (of Linlithgow), and repeatedly ſcourged, was ſuſpended, except as to one whipping. This deciſion ſanctioned the general power, no doubt, although it corrected the particular inſtance of rigour in the exerciſe of it.

Deciſions prior to Piſcatore's caſe erroneous in principle.

BUT this and ſome other judgments pronounced by the court of juſticiary about the ſame period, "have," (obſerves the reſpectable commentator on our criminal law[b]) "ſunk in "their authority." We have already ſeen, that, with reſpect to the deſcription of crimes competently tried without a jury, another rule was introduced, or rather revived, in the popular deciſion in favour of Piſcatore. If thoſe other deciſions therefore were erroneous in ſo important a particular as the deſcription of the crime, that muſt ſo far

[a] As in the caſe of Archibald Tait, ſteward to the earl of Roſebery, 15th February 1776. The juſtices had paſſed ſentence of impriſonment, pillory, and baniſhment, from the county. This ſentence, ſo far as reſpected baniſhment, was affirmed by the court of juſticiary. And a like ſentence of ſcourging, without a jury-trial, where the general point was pleaded, was ſuſpended by that great judge, lord Pitfour, a year or two before.

[b] Hume, vol. iii, p. 239.

detract from their weight touching the other particular, the ſeverity of the puniſhment. § 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

BUT, for another reaſon, thoſe deciſions afford no argument in favour of corporal puniſhments. If it was found competent to try other offences than *leviora delicta* without a jury, that may have been erroneous and unconſtitutional doctrine; but ſtill it was conſiſtent in the caſe of ſuch convictions to ſanction the infliction of ſcourging, &c.; leſs than which would have been inadequate to the condign puniſhment of ſuch aggravated offences. But the inconſiſtency here appears to be the limitation ſuppoſed to be introduced in the crimes which it is competent to try, but not in the puniſhments which it is competent to inflict; and that the petty offences to which ſummary convictions are now reſtricted, may be puniſhed by ſevere and infamous puniſhments.

Deciſions prior to Piſcatore's caſe not in point.

Thoſe deciſions not liable o the inconſiſtency of allowing *great* puniſhments to be inflicted by judges who can try only *ſmall* crimes.

LEAVING then caſes prior to that of Piſcatore, we may proceed to inquire, whether ſubſequent deciſions have brought this intereſting branch of juriſprudence to more maturity and preciſion.

Deciſions ſubſequent to caſe of Piſcatore.

THE point again occurred in the caſe juſt now mentioned of Archibald Tait. The juſtices of peace had paſſed ſentence of impriſonment, pillory, and baniſhment. He complained of the ſentence by bill of *ſuſpenſion*. The court of juſticiary ordered informations on theſe two points,—how far juſtices of peace have juriſdiction to try the crime charged by the original complaint? and, 2d, whether they could proceed without a jury? On adviſing very elaborate papers the court *ſuſpended* that part of the ſentence which reſpected the pillory.

THE point next attracted notice in the caſe of two ſummary judgments, ordaining the puniſhment of whipping or ſcourging to be inflicted; the one of them pronounced by

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

the ſheriff[a], and the other by the magiſtrates of Edinburgh[b]. One reaſon of advocation was, that no corporal puniſhment can be inflicted by an inferior judge without a jury-trial. The clerk of juſticiary was ordered to inquire into the practice. So far were the court from then thinking it a point known and ſettled either by poſitive or conſuetudinary law.

"THE ſheriffs of all the moſt conſiderable ſhires in Scotland, and the magiſtrates of all the moſt conſiderable towns[c], were wrote to by the clerk of court[d]." From the report of the juſticiary clerk[e], it appears that in the ſheriff-courts, with the exception of the county of Edinburgh alone, it was neither the practice, nor held legal, to inflict any corporal puniſhment, without a jury-trial; but in the towns, with the exception of Ayr, ſuch inſtances of the interpoſition of juries had ſeldom or never occurred. Even in the caſe of towns, however, the report does not go the length of expreſsly eſtabliſhing (what Mr. Maclaurin thought ſo important), that they had been in the practice of refuſing a jury-trial when demanded.

THIS report is not mentioned in the books of adjournal. The two caſes, with a view to which it had been ordered, did not, it afterwards appeared, bring the *general queſtion* before them. They could not therefore pronounce any deciſion upon it[f]. The *libel* in the one caſe had been drawn

[a] 1783, March 19; William Brown and others, complainers by advocation, againſt the procurator-fiſcal of the ſheriff-court of Edinburgh.

[b] *Eodie.* Young and Wemyſs complainers by bill of advocation againſt the procurator-fiſcal of the city of Edinburgh.

[c] The caſes then in dependence before the court of juſticiary, being advocations from the ſheriff and borough courts, no inquiry was made into the practice of the ſeſſions of the peace.

[d] Report.

[e] See appendix III.

[f] I ſay this upon the authority of a MS. jotting, in the handwriting of the late juſticiary clerk, Mr. Nor, who made the report, and whoſe knowledge and accuracy are well known to all who had occaſion

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

with great irregularity, and in the other was directly againſt the rule eſtabliſhed in the caſe of Piſcatore. They were both therefore diſmiſſed. The complainers thus gained their cauſe, without reference to the general point, which had been pleaded in their bills of advocation.

Only two caſes where the point has been expreſsly decided.

In the following year the court found an opportunity of more directly deciding the general point, by refuſing the bill

make inquiries into our criminal law and practice. He expreſsly ſays,—"the general queſtion not being be-"fore them in the bills and anſwers, "they could not give a judgment "thereon." [Among other papers in the poſſeſſion of Mr. Anderſon, juſticiary office.]

3dly, The ſame appears from the interlocutors themſelves, which contained articulate findings.

In the caſe of Brown, the interlocutor was inſerted already under a different head. See above, § 2, p. 161, note *a*.

In the other caſe, that of Young and Wemyſs, the advocation from the borough court, the interlocutor was as follows.

"The lord juſtice clerk, and lords "commiſſioners of juſticiary, having "conſidered the libel or complaint at "the inſtance of William Sprott, "procurator-fiſcal, againſt Henry "Young and James Wemyſs, defen-"ders, before the magiſtrates of E-"dinburgh, with the proceedings "had thereupon; and having alſo "conſidered the reaſons of advoca-"tion for ſaid defenders, with the "anſwers thereto for the procurator-"fiſcal, and having heard parties "procurators fully thereupon, find "that the libel or complaint, by "charging a number of riotous acts "as committed by the defenders at "various times and places, and upon "different perſons, for ſome of which "they had been tried, fined, and im-"priſoned, for others they had been "only proſecuted; and for the laſt "article charged in the libel, one of "them had been tried and acquitted, "and by blending the whole into one "libel, and charging the defenders "as guilty of one or all of the riots "therein enumerated, it is impoſſible "to diſcover which of the articles of "the libel is meant to be inſiſted on, "or againſt which of the defenders, "and thereby the defenders are de-"prived of the legal means of mak-"ing their defence; therefore the "ſaid lords remit the cauſe to the "magiſtrates of Edinburgh, with this "inſtruction, that they diſmiſs this "libel or complaint againſt the de-"fenders, reſerving to the procura-"tor-fiſcal, and all having intereſt, "to inſiſt in a new libel or com-"plaint, containing proper and ſpe-"cific charges againſt both or either "of the defenders before the magi-"ſtrates, or other competent court, "as accords of the law.

"THO. MILLER, J. P. D."

3dly, From the opinions of the judges, as taken by the counſel in the cauſe, it appears they were not delivered as deciding the cauſe. Ac-

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

of ſuſpenſion preſented by Jean Moir [a], who had been ſentenced by the magiſtrates of Edinburgh to be confined for a

cordingly a very reſpectable judge, (lord Kennet) the firſt who ſpoke, began with obſerving, "*we have no occaſion to decide any thing more than caſes before us.* At ſame time I ſhall throw out my opinion in general."

Theſe opinions were in favour of the power of inferior judges to inflict corporal puniſhments without a jury-trial. The ſame practice in this particular, as we mentioned above, had not, it appeared from the report, obtained in the ſheriff and borough courts. Yet I do not find from the notes, which appear to be accurately taken, that any of their lordſhips diſtinguiſhed borough from other inferior courts. Their opinions were ſtated generally. Thus, lord Hailes, who ſpoke ſecond, illuſtrated his argument in the caſe of magiſtrates, from the circumſtance of juſtices of peace not having it in their power to uſe juries at all. "Juſtices of peace "never tried by a jury;" and his lordſhip then proceeds to lay down the law as directly in the caſe of ſheriffs; "as to ſheriffs there are fewer trials "before them. Some of them chooſe "to proceed with ſolemnity, *but they "have not leſs power than magiſtrates.*" And lord juſtice-clerk Macqueen, (then lord Braxfield) who ſpoke immediately after him, inſtead of correcting his lordſhip, and diſtinguiſhing magiſtrates from other inferior judges, ſays in general, "if inferior "judges could in no caſe inflict cor-"poral puniſhment without a jury—"bad conſequences."

This fact, that the judges, on the occaſion of this trial, did not intend any diſtinction betwixt borough and other courts, ſeems of importance, in conſidering, whether this caſe fixes the point, even with regard to the former claſs of inferior judges. Notwithſtanding this opinion in favour of *all inferior judges*, the reſpectable author of the commentaries, with general approbation, lays it down, that the rule of puniſhing corporally without a jury-trial, does "not ſeem to have found reception "into ſheriff courts, even in this or-"der of offences, or *leviora delicta.*" (Hume, vol. iii, p. 238.)

It is ſaid in the report of this caſe, in the appendix to the Faculty collection, No. iv, "the court were therefore "unanimous in rejecting this reaſon "of appeal," viz. the infliction of corporal puniſhment without a jury-trial. And expreſsly on this authority, the reſpectable commentator on the criminal law, ſays, "the court "were unanimous in confirming it "with their deciſion." But the interlocutor pronounced will perhaps not appear to warrant us in going ſo far. If the opinions thrown out by the judges be regarded, they make no diſtinction between borough and other courts, but allow the power of ſummary corporal puniſhment to all inferior judges; which is not now held to be good law. If the interlocutor again be regarded, it ſays nothing of jury-trial at all; and neither did, nor had occaſion to, decide the point in the one caſe more than in the other.

[a] 17th January 1784.

1 the houſe of correction, *and there privately ſcourged*, ſo to be drummed out of, and baniſhed from, the bo- And the court refuſed a bill of ſuſpenſion; in which is Elliot and James Alexander complained of a ſen- of the magiſtrates of the ſame place, condemning them ' ſcourged through the borough [a]."

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

the refuſal of thoſe two bills of ſuſpenſion had not nerally underſtood to fix ſo important a point of cri- aw. For the year following, in the more noted caſe n Johnſon, a very eminent counſel repreſented to art, that "he meant to ſtate the general point, how corporal puniſhment could be inflicted without pro- ing by calling a jury?" The general point, however, e did not bring before the court; though it afforded g example, how incurably prone inferior judges are d their legal powers. Againſt not only the rule eſta- in Piſcatore's caſe, but the marked application of it by nimous judgment of the juſticiary in the recent caſe of this was a new attempt by the ſame borough court ſummary cogniſance of a heinous offence. The court re had no difficulty to repeat the ſame judgment they en in the former caſe, that the trial ought to have an aſſize. Johnſon thus, like the two complainers, ve mentioned above, was ſucceſsful, without any ne- o argue or eſtabliſh the general queſtion [b].

Striking inſtance of the difficulty of reſtraining inferior judges within their legal powers.

INT, then, ſo important in our criminal law, has ne- e Piſcatore's caſe, been expreſsly decided, except by ſal of two bills of ſuſpenſion, without any writing or ation appearing in the record in thoſe particular

[a] March 10. record bears, that "the fuſe to hear counſel on the point now meant to be ar- But the caſe would have been different, had the court, while they refuſed to hear the very reſpectable counſel, yet proceeded to inflict a corporal puniſhment upon his client.

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

cases; or any argument by counsel taking place upon the import of that report of the practice, which was ordered with a view to the other case.

BUT the manner in which inferior judges are supposed to have acquired this summary power of corporal punishment with which the supreme judicatures are not intrusted, affords subject of still more serious inquiry.

WE have seen above, that "antiently no person could be "convicted of the smallest offence, till he was found guilty "by a jury of his countrymen [a]." We have also seen, that "for more than a century backwards, inferior judges have "tried lesser breaches of the peace *de plano* [b];" and how encroachment after another led them the lengths already explained. In the days of lord Durie, it was subject of doubt and controversy, whether magistrates, or other inferior judges, could inflict even a pecuniary penalty without an assize [c]; and he reports, in particular, "that the lords found

[a] Ersk. b. iv, tit. 3, § 57.

[b] Ibid.

[c] 13th February 1634, Bailie of Melrose against Darling, and the cases there cited. "One Darling being convened before the bailie of "the regality of Melros at the instance of John Tait and the procurator-fiscal, for wounding of the "said John Tait to the effusion of his "blood; and the fact of blood and "bloodwyte being referred to the "defender's oath, Andrew Darling "being then present in court, and "refusing to give his oath thereupon, "decreet was given against him, convicting him, and therefore unlawing him in a particular sum for "blood and bloodwyte; which decreet being suspended, on this reason, that the party is not in law "holden to swear upon a criminal "fact, and the judge ought not to "put it to his oath, *but only ought to "have tried the same by an assize*; and "neither by oath nor yet by witnesses; for *witnesses might have been "produced before the inquest*, to inform "them, but the judge could not try "it by witnesses. The lords sustained the decreet, notwithstanding this "reason, and found it might be tried "by the party's oath, (or by witnesses, as some thought) seeing the "party was personally present; and "for refusing to give his oath, the "found the sentence well given, so "he was not pursued for life or "member, *to incur any criminal censure therefore, but only for a pecuniary "unlaw* (fine)."

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

"that the ſheriff cannot impoſe an unlaw of 50 pound, *except the fact had been tried againſt the party committer by an aſſize*[a]." But their powers kept moving onward. In the following age, ſir George Mackenzie, after taking notice of the old law, remarks,—"*yet now* ſheriffs fine and impriſon "for all bloodwits and leſſer delicts, upon probation led before themſelves without an inqueſt[b]." And in our own time, in favour of one ſet of inferior judges, is ſaid to have been introduced this diſtinction of *leviora delicta*, on which, by *hypotheſis*, they may inflict any puniſhment leſs than death, or demembration.

Gradual encroachments of inferior judges.

Allowing them corporal puniſhment in *leviora delicta* would not prevent future encroachments.

BUT were this right to be conceded to inferior judges, would the ſacrifice relieve us from all danger of ſtill farther encroachments? the reverſe ſtrikingly appears from the very caſes which are ſuppoſed to have led to the eſtabliſhment of this diſtinction; being (three out of five) *reiterated* attempts by magiſtrates to ſhake themſelves looſe from the limitation laid down in the caſe of Piſcatore.

HITHERTO their attempts have been unſucceſsful; but have we ground from the paſt to believe they will not be from time to time repeated? A thouſand ſuch illegal acts may be committed without one of them attracting the notice, or receiving the cenſure, of the ſupreme court; thus uſage, if ſuch are to be its legal effects, may have ſanctioned the uſurpation before there be an opportunity of correcting it. And if inferior judges can thus creep, ſtep by ſtep, into the right of inflicting corporal puniſhment at all; if they can acquire by uſage the right of ſummarily inflicting *ſevere puniſhments* on *petty delicts*, may they not, in the ſame manner, acquire right of inflicting *ſmall* (or pecuniary) *puniſhments* on *great crimes*? and may not both inferior and ſuperior courts

[a] 7th February 1624, Sandilands againſt Robertſon.

[b] Criminal law, part ii. tit. 31.

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

acquire the right of ſubſtituting ſummary convictions inſtead of jury-trials *in all caſes?* If uſage may operate the one effect, it does not ſeem eaſy to draw the line, or to fix the *ne plus ultra*. Yet aſſuredly there are public conſtitutional rights, the diſtinguiſhing birth-right of the Britiſh ſubject, whereof neither official encroachments, nor temporary neglect, can deprive us. And one of theſe is jury-trial, to which, more than to any thing elſe, a great writer looks for the perpetuity of the Britiſh conſtitution.

If they may acquire the power of corporal puniſhment by uſe, when are their encroachments to ſtop?

THESE conſiderations will rather incline us to examine the firſt ſtep more narrowly, and doubt the legality of inferior judges ſummarily inflicting corporal puniſhments upon thoſe leſſer breaches of "the peace, which they have been," very properly "in the practice of trying *de plano*[a]."

Some public rights cannot be loſt by preſcription.

USAGE, accordingly, is ſeldom regarded by our ſupreme courts when it runs counter to eſtabliſhed and approved principles, either of civil or criminal law[b]. For example, w

Inſtances of uſage diſregarded by the ſupreme court.

[a] Erſkine, b. iv, tit. 3, §

[b] Notwithſtanding what is ſtated in the text, and the deciſions there mentioned, it is certain that cuſtom or conſuetude not only conſtitutes law, but is the moſt known and moſt popular of any, being always adapted to the conſtitution of the country, and the national manners and habits. Lord Stair, therefore, in his introductory chapter on the general principles of law, very properly gives it precedence to the ſtatutes. "We are ruled in *the firſt* "*place by our ancient and immemorial* "*cuſtoms*, which may be called our "common law; though," &c. "By "this law is our primogeniture, and "all degrees of ſucceſſion, our legi- "tim *portion* of children, communi "of goods between man and wi "and the diviſion thereof at th "death, the ſucceſſion of the near "aquates, the terces of relicts, t "liferent of huſbands by the cour "ſy, the excluſion of deeds on dea "bed; which are anterior to s "ſtatute, and not comprehended "any, as being more ſolemn and f "than thoſe are." (B. i, tit. 1, § 1

Another inſtance of ſuch confu dinary law, though inferior in a quity to thoſe given by lord Stair as mentioned above, the diſuſe of ry-trial in civil cauſes. It con dicts no general principle of our p ſent municipal law; on the contra the procedure of our courts is ada

have ſeen above, that juſtices of peace, in one quarter of the country, had been in the practice of granting acts of warding in ſmall civil debts. After public acquieſcence, paſt all memory, a diſpute ariſing, the court were ſo far from thinking themſelves obliged to accommodate their deciſion to the practice, that it was with great difficulty they ſuſtained the *communis error*, ſo far as to ſhelter the particular juſtices from being perſonally ſubjected in damages [a]. § 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

But indeed the identical point has been decided by the higheſt authority, both of this and of our neighbouring country, in another branch of jury-law.

In England, the rights of juries had been long encroached upon in criminal proſecutions for libels. "It had frequently been determined by the court of king's bench, "that the only queſtions for the conſideration of the jury "in criminal proſecutions for libels were the fact of publi- "cation and the truth of the innuendos, that is the truth of "the meaning and ſenſe of the paſſages of the libel, as ſtat- Encroachment on the rights of Engliſh juries.

ed to it. Hence, by an eaſy tranſition, as we have ſeen, did the practice of checking breaches of the peace by ſummary fine and impriſonment originate; which, ſupported by ſtrong neceſſity, and unequivocally admitted on all hands, may be conſidered as another example of conſuetudinary law.

But theſe inſtances need only to be contraſted with the uſage in queſtion; which, ſo far from being known and eſtabliſhed, paſt all memory, was as a thing unknown, the ſubject, as we ſaw, of recent inquiry; when the caſe neither tallied with the opinions of the bench, nor former deciſions. And ſo far from being univerſally admitted, it has been always reprobated as an unſafe and incongruous violation of our public rights. So deeply is this ſound principle of conſtitutional law interwoven in the mind and practice of the Scottiſh bar, that the learned gentlemen, to whom we owe the faculty report of the caſe of Young and Wemyſs, has moſt properly recorded, that "the "counſel for the crown, who agreed "to argue the point on the part of "the public, *controverted the plea of* "*the priſoners as to impriſonment only.*"

[a] Blair againſt Geddes. See *ſupra*, c. i, § 15, p. 56.

§ 2. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

" ed and averred in the record; and that the judge, or " court, alone, were competent to determine whether the " ſubject of the publication was or was not a libel [a]." But the legiſlature, by a declaratory act [b], removed all doubt of the right of juries to give a general verdict of guilty or not guilty upon the whole matter at iſſue [c].

Inſtance of uſage not regarded in another encroachment on the powers of *Scottiſh* juries.

In Scotland, no ſuch diſtinction betwixt libels and other offences ever obtained; but the rights of juries were in more general danger. Exerciſing, of old, the unqueſtionable power of deciding the law as well as the fact, they found the priſoner, if they thought him guilty, *fylit*, *culpable*, *convict*; if innocent, they found him *clenſet*, or *acquit*, and ſometimes *innocent*; which ancient ſtile continued, with little variation down to the uſurpation, when the equivalent words *clean* and *guilty* were adopted. But the opinion that juries were judges of the fact only, gaining ground towards the cloſe of king Charles the Second's reign, introduced verdicts of *proven* and *not proven* [d]. This dangerous innovation was promoted and confirmed by the practice then introduced of ſpecial indictments and interlocutors on the relevancy of the ſeveral articles. About the beginning of the laſt century even *general verdicts* began to be worded in the ſame manner.

Antient ſtile of verdict.

Proven, when firſt uſed.

Such continued to be the ſtile of verdicts, and conſtruction of the power of juries, downward to the trial of Carnegie of Finhaven [e].

[a] Caſe of the Dean of St. Aſaph, 3 T. R. 428.

[b] 32 Geo. III, c. 60. " An act to " remove doubts reſpecting the func- " tions of juries in caſes of libels."

[c] Chriſtian's Ed. Blackſtone, vol. iv, p. 151, note 6.

[d] In the caſe of Mr. John Mitchell, tried for aſſaſſination, 10th January 1674; the jury found certain parts of the libel *proved, conform to the lords interlocutors*. And in the caſe of Arthur for treaſon, 9th January 1682, the jury found the libel *proven*.

[e] Auguſt, 1728.

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

Mr. CARNEGIE had confeſſedly killed the earl of Strathmore by an accidental thruſt aimed at another perſon, who was giving him great provocation. The ſlaughter was therefore *accidental* as well as in *chaude melle* (hot blood), and on *ſuddenty*. Theſe legal defences became the ſubject of elaborate oral and written pleadings. The court repelled the defences[a]; remitting the indictment, as a relevant charge of murder, to the knowledge of an aſſize[b]. But his counſel heſitated not to plead the legal defences over again to the aſſize; and charged them as *in right intitled*, and *in duty bound*[c], to decide the law as well as fact. They returned a verdict of "*not guilty*[d]."

Trial of Carnegie of Finhaven.

[a] The court found, "that the pannel, at the time and place libelled, having by premeditation and forethought felony, with a ſword, or other mortal weapon, wounded the deceaſed Charles earl of Strathmore; of which wound he the ſaid earl ſoon thereafter died; or that he the pannel was art or part thereof, relevant to infer the pains of law; but allowed, and hereby allow, the pannel *to prove all facts and circumſtances* for taking off the *aggravating* circumſtances of forethought and premeditation: as alſo, found, and hereby find, that he the ſaid pannel, time and place foreſaid, having with a ſword, or other mortal weapen, wounded the ſaid earl, of which wound his lordſhip ſoon died, or that he the pannel was art and part thereof *ſeparatim*, relevant to infer the pains of law; and repelled, and hereby repel, the defences proponed for the pannel, and remitted, and hereby remit, him and the indictment as found relevant to the knowledge of an aſſize."

[b] Mr. Robert Dundas, afterwards a ſenator of the college of juſtice, under the title of lord Arniſton, and promoted to the chair on the death of preſident Forbes of Culloden.

[c] *In duty bound.*—This flows from the important principle which cannot be too often conſidered, that public rights are not of diſcretionary uſe, but infer correſpondent duties. But this affords no argument againſt the jury, on proper occaſions, returning ſpecial verdicts, reſerving the law to the conſideration of the court. If they are doubtful of the law, they may find the fact ſubject to the opinion of the court upon the relevancy; but if they can form an opinion themſelves upon the whole caſe, law and fact, they are bound to do ſo, and declare it.

[d] See Arnot's Criminal trials, page 191, where ſir Robert Dickſon of Inverеſk, chancellor, and the names of the other ſpirited and enlightened jurymen who concurred in that memorable verdict, are gratefully recorded.

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

THIS triumph of conſtitutional law achieved a twofold effect; on the one hand, reviving that humane diſtinction of "ſlauchter on ſuddenty," which was familiar to our early juriſprudence, and now daily recogniſed by the court under the term "culpable homicide [a]," has reſumed its place as an acknowledged doctrine of our criminal code; and, on the other, re-eſtabliſhing the right of juries on ſuch a baſis in this country, that it has never ſince become the ſubject of doubt or controverſy [b].

[a] It ſeems material to notice, that neither abuſive words, nor deriſive geſtures, nor any treſpaſs on lands or goods merely, if not accompanied with violence to the perſon, are admitted in excuſe for ſlaughter. Farther, our law differs from the Engliſh, by which any aſſault whatever on the perſon, though no more than a blow with the hand, or twiſting of the noſe, or a fillip on the forehead, or juſtling on the ſtreet, or whipping the perſon's horſe out of the track, (Blackſtone, v. iv, p. 200), are ſaid to lower the offence to manſlaughter; whereas, excepting in the peculiar caſe of killing the adulterer in the fact, our law requires the aſſault to be ſevere and continued, carrying agitation and alarm with it, a dread of further harm and injury, as well as preſent ſmart and pain of body, making a caſe, not of paſſion merely, but of paſſion excited by bodily ſuffering, and mingled with terror and perturbation of ſpirits. See this diſcuſſed at large by Mr. Hume, vol. i, c. 6.

Our law differs from the Engliſh in another particular alſo. By the latter it is ſaid to be manſlaughter, where the parties on a ſudden quarrel, fight with mortal weapons, each giving the other time to draw and be on his guard; or even if in heat of blood they go to the field and fight. By our law, again, the perſon who kills muſt have been *aſſaulted* and in a manner conſtrained to ſtrike by the *bodily* violence he was *ſuffering*. But this will come under our notice below, in the chapter touching *Dueling*.

[b] If it be important that juries ſhould not neglect, it is equally ſo that they ſhould not exceed, their legal powers. They are like judges to decide the cauſe before them viz. the proof, in point of fact and the relevancy, in point of law which therefore muſt regulate their verdict. Were they to be influenced in returning their verdict, by conſiderations of ſuppoſed equity or expediency, either favourable to the pannel, on the one hand, as the ſuppoſed injuſtice of the law, or its being too ſeverely puniſhable, &c.; or unfavourable to him, on the other, as from prejudices againſt him individually, or againſt the offences charged againſt him, this would be ſtepping out of their own province, and infringing their oath of office. "I

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

IF uſage, therefore, could not deprive juries of their right of deciding the law, far leſs can it exclude them altogether, even in petty delicts, which are corporally puniſhable.

THESE conſiderations may therefore perhaps deſerve the notice even of that claſs of inferior judges, who have been in the practice of inflicting this puniſhment; of ſuch queſtionable legality; which neceſſarily renders the culprit ſhameleſs and incorrigible, inſtead of aiming at his perſonal reformation; and the ſalutary operation whereof, as a warning to others, depends upon the rarity and ſolemnity of its infliction; and conſequently admits and requires the formality of a jury-trial.

Borough courts.

AT all events, it certainly affords matter of ſerious conſideration to magiſtrates, who may be in the practice of inflicting ſuch puniſhments, to know, that from the books of adjournal, it appears, that in *nine* out of *ten* of thoſe caſes which may ſeem to favour the *general power*, yet the particular-exerciſe of it has not been ſanctioned, the humanity of the ſupreme court remitting the corporal puniſhment in part, if not altogether.

OTHER inferior judges have not even this uſage to plead. From the report made by the clerk of juſticiary in 1783, it appears that only in one ſheriffdom had any ſuch practice

" would be laying claim not to be " judges *of* the law, but *to judge the* " law itſelf and the legiſlature too, " and to ſet their own voice and au- " thority above both. Let it be re- " membered, that wherever the law " is thrown aſide, the trial is arbi- " trary, whether the tribunal, which " has the charge of it, be a jury or a " court, and is nowiſe leſs liable to " abuſe in the hands of the one ſet " of men than of the other." Hume, vol. iv, p. 292.

The jury in Finhaven's caſe did not exceed theſe limits. Their verdict was their opinion of the law.

§ 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

prevailed. This report not including juſtices of peace, it was thought neceſſary, in the view of this work, to tranſmit to the different clerks of the peace the following query:—

Juſtices of peace.

"Are the juſtices in your county in the practice to puniſh "by fine and impriſonment; or do they ever whip or ba- "niſh the county; or puniſh by the ſtocks or the pillory?"

Query put to the clerks of the peace.

The anſwers received from almoſt every county in Scotland, were what might be expected from a court, which ranks among its members the chief of the landed gentry and legal ability of the country. Excepting one or two counties, no corporal puniſhments were known to be inflicted.

Anſwer of the clerks of the peace.

INSTANCES, as we have ſeen, there have been of ſevere puniſhments inflicted both by the ſheriff and by the ſeſſions, and ſanctioned by the ſupreme court. But abhorrent from the ordinary practice, they can be conſidered only in the light of culpable exceſſes of power, which all inferior functionaries, if not narrowly watched and ſpeedily checked, are liable to commit. What the learned commentator on our criminal law therefore has judiciouſly laid down, with reſpect to ſheriffs and ſtewards, that no ſuch rule of law has as yet found its way in their courts, may be alſo with the ſame reaſon be extended to juſtices of peace.

Argument in the caſe of juſtices from the act 1661.

IN the caſe of the latter, indeed, the principles of the common law, and the propriety of abſtaining from corporal puniſhments, are ſtill farther inforced by the terms of the two general ſtatutes [2], which giving juſtices of peace the execution of ſome ſevere acts againſt the cutting of planting, and other offences, under the certification of *ſcourging, hanging to the death*, &c. provided expreſsly, that with reſpect to this magiſtracy, the "puniſhment to be inflicted by "them ſhall be a *pecunial ſum*, anſwerable to the circum- "ſtances of the offence;" whereas the execution of the ſta-

[2] Appendix I, No. 5, p. 18; and No. 7, and No. 8, p. 54.

tues againſt curſing and ſwearing, or mockers, or reproachers of piety, offences puniſhable by fine and impriſonment only, were committed to them *generally*[a]. § 4. PUNISHMENTS—CORPORAL, IF WITHOUT JURY-TRIAL.

BUT although the verdict of a jury may be neceſſary to eſtabliſh the guilt of the culprit, who is to be puniſhed with loſs of life, good name, or expoſed to corporal pain, yet we have ſeen that inferior judges have properly and neceſſarily acquired the power of ſummarily checking *leviora delicta*, by depriving the offender of ſome part of his property; which indeed, from the clauſe of the act 1661, above inſerted, appears to be puniſhment in view for juſtices of peace to inflict; throughout that ſtatute the word *puniſhment* being uſed ſynonimouſly with *fine*. This leads us therefore to notice next that claſs of puniſhments, which Lambard ſtiles pecuniary, "comprehending therein all fines, amerciament, and "forfeitures of offices, goods, or lands[b]."

FINE, or pecuniary mulct, which, though the chief ſanction employed by our German anceſtors in almoſt every caſe, not even excepting that of murder, is to be conſidered as a puniſhment of the loweſt denomination, and is uſed chiefly in the caſe of aſſaults, not of an attrocious nature, and pet-

[a] See ibid. 1661, § 30.

This is nowiſe contradicted by that part of this ſection, which provides, "in caſe of the inabilities of the parties delinquents to pay the ſum "mentioned in this inſtruction, the "ſaid juſtices ſhall put in execution "ſuch laws as for *corporal* puniſhments as have any proviſion mentioned in them for ſuch caſes."—That *corporal puniſhment*, in this clauſe of the ſtatute 1661, touching *curſing*, &c. and in the immediately preceding enactment, 1661, c. 19, againſt the ſame offences, means only impriſonment and confinement in the jugs, appears from the original acts referred to, 1551, c. 16; and 1581, c. 103, which ſpecify the particular endurance and mode of the confinement, and other minutia of the puniſhment; but neither of them, like the other claſs of ſtatutes, give, in the caſe of poverty or repeated guilt, any authority to ſcourge, put in the pillory, or hang to the death.

[b] B. i, c. 12.

§ 4. PUNISHMENTS—FINE.

ty riots, and breaches of the peace; the kind of offences wherein the juriſdiction of the ſeſſions chiefly conſiſts.

FINE is either impoſed by ſome ſpecial ſtatute fixing the *quantum*, or at the diſcretion of the judge.

THOSE of the firſt claſs do not fall to be enumerated here, but will be found under their reſpective heads, of game, exciſe, &c. &c. Beſides eſcheat or forfeiture of moveables, (perſonal eſtate) is a conſequence of capital puniſhment, and makes one article of the ſtatutory pains of deforcement, bigamy, perjury, and ſome other offences.

WITH reſpect to the other claſs of fines, the diſcretion of the judge muſt be regulated according to law.

Exceſſive fines not to be inflicted.

THE claim of rights has particularly declared, that exceſſive fines, ſuch as the offender cannot pay, at leaſt without his ruin, ought not to be impoſed [a]. "It is therefore," ſays Blackſtone [b], and the ſame obſervation muſt apply to this country, "not uſual to aſſeſs a larger fine than a man is "able to pay, without touching the implements of his liveli-"hood."

Deprivation of office.

HERE alſo, as affecting a man patrimonially, may be mentioned the puniſhment of deprivation of office; by which the juſtices may puniſh any fault or neglect in their clerk, fiſcal, or other officers.

[b] 1689, c. 13. It alſo declares, that all grants and promiſes of fines, and forfeitures of particular perſons, before conviction, are illegal and void. "And that this was not an "imaginary grievance appears," (ſays Mr. Hume, "among other proofs, "from the many libels which were "uſed for uſury between 1663 and "1670, at inſtance of the earl of "Glencairn, who had obtained a gift "of all penalties and forfeitures ac-"cruing from the infringement of "the laws relative to that offence." Vol. iv, p. 382.

[c] Blackſtone, b. iv, c. 4, p. 373.

§ 4. PUNISHMENTS—IMPRISONMENT.

IMPRISONMENT, another of our ordinary puniſhments, naturally follows that of fine, whereof it is the neceſſary ſubſtitute in the caſe of the offender's poverty, and in every caſe the natural compulſitory for obtaining payment. As the ſentence impoſing the fine generally ordains the offender to be impriſoned till payment, ſo, if his known indigence affords no proſpect of his ever paying it, were he to lie in priſon for years, or for life, the judge rather puniſhes him by impriſonment for a certain time, either abſolutely or as an alternative, by which he may redeem himſelf from payment of the fine.

IN this country it has not been the practice to impriſon for thoſe long terms of four and five years, of which inſtances have ſometimes happened in our neighbouring kingdom. Indeed there ſcarcely has been any examples of ſentencing to impriſonment for a longer period than twelve months, excepting ſome caſes of certification of return from baniſhment or tranſportation, where mention is made of impriſonment for a longer time, even for life, though rather *in terrorem* than with any ſerious purpoſe of carrying it into effect [a].

"IT does however appear, that a thing was formerly "practiſed with us, in itſelf certainly improper, and of "which I ſee no inſtance in more improved times; that of "ſentence to impriſon indefinitely, or during the pleaſure "of the court [b]."

BUT impriſonment for a moderate endurance ſeems to have been an uſual puniſhment in our ancient law, which, as already mentioned, deviſed excellent plans for ſecuring and ſetting to work petty offenders, that have not however been generally carried into effect; though we ſeem now

[a] Hume, vol. iv, c. [b] Ibid. p. 379.

§ 4. PUNISHMENTS—IMPRISONMENT.

beginning to be aware of the neceſſity of having places i different parts of the country, where the offender may n only be confined, but employed in ſome ſort of labour, b which he may, in part at leaſt, relieve the public of the e pence of keeping him, as well as have ſome chance of a quiring induſtrious habits. And it is not to be "doubte "that independently of our ſtatutes, many of which a "point this courſe of diſcipline for offenders of cert "kinds, eſpecially beggars and vagabonds, and the ha "bourers of ſuch, there is ſufficient authority in law fo "qualifying a ſentence of impriſonment, with ſo reaſonable "and wholeſome a proviſion [a]."

[a] Hume, vol. iv, p. 380.

"Of the reforming puniſhments "which have not yet been tried, "none promiſes ſo much ſucceſs as "that of *ſolitary imprisonment*, or "the confinement of criminals in ſe- "parate apartments. Averſion to "labour is the cauſe from which "half of the vices of low life deduce "their origin and continuance; pu- "niſhments ought to be contrived "with a view to the conquering of "this diſpoſition. Two oppoſite ex- "pedients have been recommended "for this purpoſe; the one, ſolitary "confinement, with hard labour; the "other, ſolitary confinement, with "nothing to do. Both expedients "ſeek the ſame end; the one by "making labour habitual, the other "by making idleneſs inſupportable. "When jails are once provided for "the ſeparate confinement of priſon- "ers, which both propoſals require, "the choice between them may ſoon "be determined by experience. If "labour be exacted, I would leave "the whole, or a portion, of the "earnings to the priſoner's uſe; and "I would debar him from any other "proviſion or ſupply; that his ſub- "ſiſtence, however coarſe or labo- "rious, may be proportioned to his "diligence, and that he may taſte "the advantage of induſtry, toge- "ther with the toil. I would go "farther; I would meaſure the con- "finement, not by duration of time, "but by quantity of work, in order "both to excite induſtry, and to ren- "der it more voluntary. But the "principal difficulty remains ſtill; "namely, how to diſpoſe of criminals "after their enlargement. By a rule "of life, which is perhaps too inva- "riably and indiſcriminately adhere- "ed to, no one will receive a man o "woman out of a jail into any ſervice "or employment whatever. This i "the common misfortune of publi "puniſhments, that they preclude th "offender from all honeſt means o "future ſupport. It ſeems incum "bent upon the ſtate to ſecure

§ 4. PUNISHMENTS—STOCKS.

THE punishment of putting in the stocks, or jugs, seems to be viewed, both by our own and the English law, as a species of imprisonment. Where there was no proper prison, it was a mode of securing offenders always at hand. Accordingly, in England, a constable, by the common law, may confine offenders in the stocks by way of security, but not by way of punishment. It is called the constable's prison, and confinement therein does not prevent the culprit from being tried for the offence.

FORMERLY the court went the length of protecting a prisoner from all arrestment for civil debts [a].

Endurance of protection limited by statute.

THE abuse of those protections being complained of, it was corrected by the statute 1681, c. 9, which allows the lords of justiciary to give protections to such as are charged to appear before them, for the necessary space of time only, not exceeding one month. This act impowers the lords

"maintenance to those who are willing to work for it; and yet it is "absolutely necessary to divide criminals as far asunder from one another as possible. Whether male "prisoners might not, after the term "of their confinement was expired, "be distributed in the country, confined within certain limits, and "employed upon the public roads; "and females be remitted to the "overseers of country parishes, to be "there furnished with dwellings, and "with the materials and implements "of occupation; whether by these, "or by what other methods it may "be possible to effect the two purposes of employment and dispersion, well merits the attention of "all who are anxious to perfect the "internal regulation of their country." (Paley's Philosophy, vol. ii, p. 292, 293, 294.)

[a] On the 15th January 1677, Geo. Hardie, a person from Orkney, and prisoner, upon sentence for an assault, sets forth, in a petition, that he is under hazard of captions and acts of warding, and therefore prays relief; "the lords, &c. discharge all "messengers at armes, and other officers whatsomever, from using or "putting any acts of warding, captions, or arrestments, for civil debts, "to execution against the person of "the said George Hardie, sua long "as he remains prisoner in the tolbuith of Edinburgh, by virtue of "their sentence, and for twentie days "thereafter, that he may return saif "to his own country."

§ 2. PUNISHMENTS— to protect thoſe only who are charged to appear themſelves [a].

Arreſt in priſon. A PERSON when undergoing ſentence of impriſon liable to be laid hold of by *legal diligence*, whereby, a expiry of the term contained in the ſentence of im ment, he will be detained in jail till he ſettles with vate creditor.

Arreſt of one under ſentence of tranſportation. BUT ſometimes the public intereſt, and that of the creditor, may be oppoſite. The ſentence may hav demned the priſoner to baniſhment alſo. In ſuch a court of juſticiary found, "that the criminal ſentenc "niſhment muſt, notwithſtanding of the arreſtme "upon the caption, go to execution [b]." Still leſ has the creditor to complain where the baniſhment from the kingdom, but from a particular county o debtor remaining ſtill under the juriſdiction of hi courts. The ſentence of the law cannot be diſapp private debts. The creditor might as well not all minal to be carried out in order to be whipped [c].

Diſcretionary power of magiſtrates. IN the courſe of this inquiry into puniſhment have ſeen the great confidence which our law re wiſe and humane diſcretion of the magiſtrate; moſt caſes not capital, is intruſted the proportio verity of the puniſhment to the particular circu

How limited. BUT this diſcretion has limits, which it c without incurring the animadverſion of the ſupr In particular, it is not legal arbitrarily to inflic unknown in our practice, or not uſually emp

[a] Hume, vol. iv, p. 372.
[b] 16th Nov. 1752, Wm. Douglas.
[c] Kilk. tit. Priſoner, No. 4, where

a ſimilar judgmen court of ſeſſion, i ſon under ſenten

f the particular deſcription. On this ſubject the court lion had lately an opportunity of pronouncing a very re judgment. § 4. PUNISHMENTS.

DER night, during an affray on the ſtreets, a gentle- carried to the guard or priſon, a perſon who, he ht, had inſulted him. Next morning the culprit being ht before the magiſtrates, the accuſer verbally ſtated mplaint. The other pleaded intoxication, as an apolo- any thing that might have been improper in his be- r. Without a written libel, or teſtimony of witneſſes, n of the accuſer himſelf on oath, an inhabitant and nolder of the borough was ſummarily adjudged over to -ſervice, while there was neither proof nor admiſſion e had been bred to the ſea, and was forthwith ſent nd one of his majeſty's ſhips. But the court of ſeſſion, application, unanimouſly granted warrant for his im- te liberation [a].

[a] March 1804, captain James yal navy, regulating the im- rvice at Leith, againſt Dun- ertſon.

nterlocutor of the magiſtrates ollows: "D. R. having been ht before the magiſtrates, on mplaint of colonel M. of the egiment of foot, for aſſault- n on the ſtreets of this city, cloud of night, while order- ro of his men home to their rs; and which having been ntiated againſt him, and be- nown to have been brought ly before the magiſtrates for lar conduct, he was conſider- a fit perſon to ſerve his ma- n the preſent ſituation of affairs, having formerly been in the ſervice. 31ſt December 1803." —Application was made to the judge-admiral, who "having con- ſidered this bill, anſwers, and replies, and writs produced; in reſpect that it appears that the complainer has been adjudged to ſerve his majeſty, in conſequence of an offence committed on ſhore, by a court over whoſe juriſdiction, while exerciſed in matters or of- fences not maritime in their nature, the high court of juſticiary has no controul, refuſes the bill, recals the interdict, and finds expences due." It being thus found neceſſary to apply to the court of ſeſſion, the interlocutor mentioned in the text was pronounced.

§ 4. PUNISHMENTS.

WHEN the cauſe came to be adviſed, opinions were delivered, which cannot be too well known, or too accurately remembered, by inferior juriſdictions. In language unuſually indignant, the court reprobated the whole procedure, as equally a violation of the fundamental principles of our criminal law, and of the privileges of a Britiſh ſubject; in particular, the taking the accuſer's word, though of the greatest reſpectability, as evidence againſt the defender, how inferiour ſoever in perſonal conſideration. The offence, it was obſerved, had it been regularly libelled and proved, might have been ſuitably puniſhed with a ſhort confinement; but to judge a landſman to the ſea-ſervice, was going far beyond their powers, and never juſtifiable, unleſs when inflicted by virtue of ſome ſpecial ſtatute; ſuch as the temporary impreſſ apprehending acts.

CHAP. VI.

Of Evidence.

§ 1. THE ſeſſions found their judgments on legal evidence; and, individually, juſtices of peace are often appointed commiſſioners to take proofs in cauſes depending before the ſupreme court. In both views, ſome general acquaintance with this branch of juriſprudence is neceſſary. § 1. EVIDENCE IN GENERAL.

EVIDENCE, or proof, is defined by lord Bankton to be "the legal means of convincing the judges that the purſuer's claim, or defender's plea, is founded in fact [a];" and is either by writ and other productions, or by oath of party, or by witneſſes. Proof defined.

PROOF by writ or by oath, or by witneſſes, lord Stair calls *inartificial*, as proving points expreſsly, directly, and *in terminis*, and ſo requiring no art or ſkill to make parties underſtand that the point found relevant is proved [b]. If the points be found proveable by all thoſe ways, the proof is ſaid to be *pro ut de jure*. Artificial and inartificial.

[a] Bank. b. iv, tit. 26, § 1. [b] B. iv, tit. 45.

§ 2. WRITTEN EVIDENCE.

II. WRITTEN evidence is either public or private. The former are either records or matters of an inferior nature.

1ſt, acts of parliament.

RECORDS are acts of parliament, or other parliamentary proceedings. Acts of parliament are either public and general, or local and perſonal, called alſo private and particular.

General or public acts.

The former regard the kingdom in general; the latter, ſome individual only, or particular deſcription of men [a].

GENERAL or public acts are ſuppoſed to be known to all the lieges. It is *pars judicis* to take notice of them, though

[a] Burns, tit. Evidence.

"From this definition, it is plain, "that the ſame law may be both "general and particular in differ- "ent parts; *ex. gr.* 3 Jac. I, againſt "Recuſants, is general in diſabling "them to preſent; yet the clauſe "giving their preſentations to the "Univerſities is particular, and muſt "be pleaded or found.

"A law which concerns the king "is a general law, becauſe he is the "head and union of the common- "wealth. A law that concerns all "lords, is a general law; becauſe it "concerns the whole property of the "kingdom, it being all holden un- "der lords mediate, or immediate: "but a law that concerns only the "nobility, or lords ſpiritual, is a par- "ticular law, becauſe it relates to no "more than one ſet of perſons, as if "a law make them liable to ſuch and "ſuch proceſs; yet perhaps, if a law "related to the body of the peerage, "it would be deemed a general law, "for as ſuch they are part of the le- "giſlature, and what relates to the "conſtitution is a general law.

"What relates to all officers in ge- "neral is a general law, becauſe it "concerns the univerſal adminiſtra- "tion of juſtice; as that no ſheriff or "other officer ſhould take a reward "for his office. But if it relate only "to particular officers, as to ſheriffs, "(23 H, 6, 10.) it is a particular law.

"What relates to all ſpiritual per- "ſons is a general law, inaſmuch as "the religion of the kingdom is the "general concernment of the whole "kingdom, as 21 H. VIII, 13 Eliz. "10, 18 Eliz. 11. But what relates "to one ſet of ſpiritual perſons is "particular; as the act of 11 Eliz. "of biſhops leaſes.

"An act that comprehends all "trades is general, becauſe it relates "to traffic in general; but an act "that relates to grocers or butchers "is particular.

"If the matter of a law be ever ſo "ſpecial, yet if it relate equally to "all, it is a general law; but a law "relating to ſome counties or pa- "riſhes is ſpecial.

"Though it be regularly true that "a private law ſhall not be taken no- "tice of unleſs it be ſhewn, yet it "will be otherways in caſe ſuch "private law be recogniſed by a pu- "blic one. *Ex. gr.* the 23 H. VI,

not pleaded by the parties; and the printed ſtatute book is allowed to be evidence of them. § 2. WRITS—PUBLIC.

Particular or private acts.

Evidence of them.

But local or perſonal acts are not conſidered as already lodged in the minds of any other perſons, except thoſe whom they particularly concern. The printed ſtatute-book therefore is not evidence of them, even although reduced into the ſame volume with the general ſtatutes. The party muſt have an authenticated copy, compared with the parliament roll[a]. To prevent this inconveniency, and to enable judges to conſider them, it is frequently declared, that acts in their nature private ſhall be deemed public[b].

2d, judicial records.

The *ſecond* ſort of records are the judgments of the king's courts of juſtice; which "prove themſelves, and "cannot be proved by witneſſes: copies of them muſt be "proved by witneſſes, and then they are good evidence[c]." But the regular and ſureſt way to prove them is, in this country, by an extract, or official copy, ſubſcribed by the clerk[d].

"The records of courts will prove what was done by

c. 10, relative to ſheriffs bonds, is a "private law; yet 4 and 5 Anne having enabled the ſheriff to aſſign "ſuch bond, the court muſt take no"tice of the law that enables him to "take ſuch bond." (Buller's Law of *Niſi prius*, p. 222.)

[a] Ibid.

[b] Law of evidence, by T. Peake, Eſq. p. 20. No. 6.

Private acts of parliament which concern a whole county, or a large body of people, have been allowed to be given in evidence, without comparing them with the record; and theſe things are the rather to be admitted, becauſe they gain ſome authority by being allowed to be printed by the king's printer; and they are ſuppoſed not to be wholly unknown. (Burns, ibid.)

The ſtatutes this laſt year have been arranged under theſe three heads: *public general—local and perſonal, to be judicially noticed—local and perſonal, not printed*, inſtead of the former arrangement, *public general—public local, and perſonal—private.*

[c] Burn, tit. Evidence, § 2.

[d] And in England, by what they call an exemplification under the great ſeal, or at leaſt the ſeal of the court. Ibid.

§ 2. WRITS—PUBLIC.

" the judges, or alleged by the parties, but will not prove " the verity of their allegations, without the inſtructions of " them [a]." Nor will the judicial minute of the clerk before an inferior court, bearing a party's confeſſion, be effectual againſt him, unleſs it be ſubſcribed either by him, or if he cannot write, by the judge for him.

Judicial minute,

Warrants preſumed in the record.

THE warrants of the extract are preſumed to be in the record.

Solemnities how far neceſſary to the validity of judicial deeds.

" JUDICIAL writings, as, enactment by a party to his cau- " tioner, in the court-books, or judicially made, are good, " without the ordinary ſolemnities of other deeds, and may " come under the notion of public writings; but unleſs the " parties ſubſcribe them, they are not probative [b]."

Notorial inſtruments.

UNDER this claſs of public writings fall notarial inſtruments alſo, and executions by meſſengers, which prove " that

Executions prove not extrinſic facts,

" the ſolemnities therein ſet forth were uſed, and are not to " be invalidated otherways than by a proof of falſehood [c]. " But they do not prove any other extrinſic facts therein aver- " red againſt third parties, nor are they evidence of the war- " rants on which they proceed [d]. But where the notary is

nor their warrants.

" required to make out or extend an inſtrument upon any " fact which may be proved otherwiſe; or, in other words, " where an inſtrument is not conſidered in law *as a ſolemni-* " *ty*, it is not admitted, *per ſe*, as evidence of the facts there- " in atteſted, but muſt be ſupported either by the teſtimony " of the notary and inſtrumentary witneſſes, or by ſome " other proof [e]."

PRIVATE.

PRIVATE writings, again, are as various as the tranſactions

[a] Bank. book iv, tit. 27, § 2.
[b] Ibid.
[c] Erſk. book iv, tit. 2, § 7.
[d] Ibid.
[e] Ibid. § 6.

§ 2. WRITS—PRIVATE.

of mankind; and, in order to guard againſt forgery, certain ſolemnities are neceſſary to their validity. Before the art of writing was common, deeds were vouched by the ſeal of the granter [a]. But even in thoſe days, the preſence of witneſſes at the ſealing was uſual and neceſſary. The firſt improvement was, requiring the ſubſcription of the granter, or, if he could not write, of a notary for him [b]. Afterwards, in important deeds [c], the ſubſcription of two witneſſes, and, if the granter could not write, of two notaries and four *famous* witneſſes, was required as an indiſpenſable ſolemnity, not ſuppliable by a condeſcendence and proof [d]. Notaries muſt expreſs in the doquet, the mandate or authority whereby they ſubſcribe. It is neceſſary to mention in the body of the deed, the name and deſignation of the writer of it [e], as well as of the witneſſes [f], who muſt either ſee the granter ſubſcribe, or hear him acknowledge his ſubſcription, otherwiſe they are puniſhable as acceſſary to the crime of forgery; and if he be blind, or cannot read, they muſt alſo ſee it read over to him, and be ſure he underſtands its meaning [g].

Solemnities.

Subſcription of witneſſes;

granter.

Deſignations.

Deeds of importance.

Notary's doquet.

Writer's name.

Witneſſes.

DEEDS may be written book ways [h], provided each page be ſigned by the granter, and marked by its number, and the teſting clauſe expreſs the number of pages. Certain deeds are not probative, unleſs written on ſtamped paper or parchment [i]. The granter's name and deſignation are eſſential,

Stamped paper.

[a] *Ante annos octaginta plena fides chartis adhibebatur licet ſigillo diſponentis tantum eſſent munita.* (Craig, de Feudis, lib. ii, dieg. 4, § 13.)

[b] 1540, James V, c. 117.

[c] By which are underſtood conveyances of heritable property, or obligations for ſums exceeding 100l. Scots, 8l. 6s. 8d.

[d] 1579, James VI, parl. 6, c. 80; and 1681, Charles II, parl. 3, c. 5.

[e] 1593, James VI, parl. 21, c. 175.

[f] 1681, Charles II, parl. 3, c. 5.

[g] July 3, 1792, Truſtees of George Roſs againſt S. Agliamby. (Fac. Coll.)

[h] 1696, Will. parl. 1, c. 15.

[i] 10 Anne 18, and a multiplicity of ſubſequent enactments.

§ 2. WRITS—PRIVATE.

Some deeds do not require the ordinary ſolemnities. A holograph deed is effectual without witneſſes [a], but not probative of its date. Teſtaments in no caſe require more than the ſubſcription of one notary and two witneſſes; and if they are executed where profeſſional aid cannot be obtained they are ſuſtained, though they may not be quite formal. Diſcharges to tenants are ſuſtained without witneſſes, from their preſumed ruſticity or ignorance in buſineſs. Miſſive letters *in re mercatoria*, commiſſions, fitted accounts in the courſe of trade, and bills of exchange, though not holograph, are, from the favour of commerce, ſuſtained without the ordinary ſolemnities. Deeds executed abroad, and valid there, are ſuſtained here *ex comitate*. And books of accounts kept by merchants, manufacturers, ſhop-keepers, and other dealers, are probative againſt themſelves, though they be neither holograph, nor ſubſcribed by them [b]. Jottings in looſe papers, not ſubſcribed, are not probative, though they be holograph, being frequently deſigned as notes for the memory; where things may be marked as already finiſhed, merely from the view that they are to be immediately tranſacted [c].

Privileged deeds.

Holographs

Teſtaments.

Diſcharges to tenants.

Miſſive.

Foreign.

Merchants accounts.

How far evidence in favour of the merchant himſelf.

The books of a merchant, regularly kept, and containing his whole tranſactions, are received as a legal evidence, if they be ſupported by one witneſs in articles which admit of parole evidence, and by the ſupplementary oath of the merchant himſelf [d]. "But, after all, the authority due to the "books of a merchant, depends much upon his character, "and on the particular circumſtances of the caſe [e]."

Ancient facts.

In the proof of ancient facts, as the proximity of blood,

[a] A deed is holograph where the eſſentials of it are written by the granter.

[b] Erſk. book iv. tit. 2, § 2.

[c] Ibid.

[d] Geſ. June 5, 1672, Wood.

[e] Erſk. Ibid.

primogeniture, &c. hiſtories compiled by writers of credit, near that age when the facts happened, are probative, if they be not contradicted by other hiſtorians as ancient, and of equal authority [a].

§ 2. WRITS—PRIVATE. Hiſtories.

In conſidering how far hiſtories are evidence, the Engliſh lawyers make a diſtinction, whether the fact be of a general or particular nature? Camden's Britannia was offered in evidence to prove a particular cuſtom, but refuſed; for the court held that a general hiſtory might be given in evidence to prove a matter relating to the kingdom in general, becauſe the nature of the thing requires it, but not to prove a particular right or cuſtom [b].

Hiſtories general, how far evidence of general facts: of particular facts.

Surveys, taken on public occaſions, are evidence to aſcertain the rights even of individuals not named in them [c].

Surveys on public occaſions.

[a] Stair, book iv, tit. 42, § 16; Erſk. Ibid.

[b] So, in the caſe of St. Katherine's Hoſpital, Hale, c. i, "allowed a "chronicle to be evidence of a parti-"cular point of hiſtory in Edward "the Third's time: ſo a year book "may be evidence to prove the courſe "of the court. And in this caſe it "was admitted, that heralds' books "are good evidence as to pedigrees, "and pariſh regiſters as to births and "marriages, upon the nature of the "thing. But in the exchequer, the "queſtion being, whether the abbey "*de fontibus* was an inferior abbey or "not? Dugdale's *Monaſtion* was refuſ-"ed for evidence, becauſe the original "records might be had." (1 Salk. 281, 7 W. Stainer and the burgeſſes of Droitwich.

So in the caſe of Cockman and Mather, E. 13 G. On a trial at bar, concerning the right of viſiting the univerſity college in Oxford, one of the iſſues was, whether king Alfred was founder? And the counſel for the plaintiff would have given in evidence ſeveral hiſtorians as to this point; but the chief juſtice declared that ſuch *evidence is never admitted, unleſs in proof of a point concerning the public government.* And the evidence was not allowed. (Barnard 14.—Burn, vol. i, p. 652.

[c] Peake's Law of evidence, p. 55.

Thus Doomſday book, which was a ſurvey of the king's lands, made in the time of William the Conqueror, is the only evidence to prove whether a manor is held in ancient demeſne; that is, whether it was part of the ſoccage tenure in the hands of Edward the Confeſſor, or not; and ſo high is the credit of this book, that the inſpection is made by the court. (Ibid.)

§ 2. WRITS—PRIVATE.

Similitude of hands.

IN England, ſince the reverſal of the attainder of Algernon Sydney, ſimilitude of hands ſeems not to be held as evidence in any criminal caſe, whether capital or not capital [a]; but the witneſs ſaying that he was well acquainted with his writing, and knew it to be the party's, is evidence [b].

IN general, the witneſs ſhould have gained his knowledge from his having ſeen the party write, but under ſome circumſtances that is not neceſſary; as where the handwriting to be proved is of a perſon's reſiding abroad, one who has frequently received letters from him in a courſe of correſpondence, would be admitted to prove it, though he has never ſeen him write [c].

SIR GEORGE MACKENZIE has intimated his opinion, that ſimilitude of hands is not ſuch proof as the judge can properly rely on, but a ground of preſumption only at the beſt "And perhaps the point muſt be yielded with reſpect to "thoſe ſituations, if ſuch ſhall ever happen, where the pro "ſecutor truſts to ſimilitude of hand alone, not ſtrengthened "with any other likelihood or circumſtance of preſumption in the caſe, as if a perſon be accuſed of treaſon or ſedition, on the ſingle evidence of an unſigned writing "found in the cuſtody of ſome one who is a ſtranger to "him. But it is no leſs fit to be conſidered, on the other "ſide, that men do not call witneſſes to the execution or "delivery of writings of a criminal nature; and hardly in

[a] Burn, tit. Evidence.

[b] Ibid.

[c] So where the antiquity of the writing makes it impoſſible for any living witneſs to ſwear he ever ſaw the party write; as where a parſon's book was produced to prove *a modus*, the parſon having been long dead, a witneſs who had examined the pariſh books, in which was the ſame perſon's name, was permitted to ſwear to the ſimilitude of the handwriting; for it was the beſt evidence in the nature of the thing; for the pariſh books were not in the plaintiff's power to produce. Ibid.

"any caſe will it happen that the evidence ariſing from the "likeneſs of hand is not either ſtrengthened or diſcredited "by the other particulars of the caſe [a]." § 2. WRITS—PRIVATE.

III. Another ſort of evidence in criminal matters conſiſts in exhibition of articles in the hands of the clerk of court, ſuch as the ſtaff or cudgel by which a man has been attacked, or the bloody cloaths, or bloody knife, or the ſtolen goods, or falſe keys; any of which may either be articles of evidence themſelves, or may become ſuch by what is depoſed in reference to them by the witneſſes in the trial [b]. § 3. ARTICLES EXHIBITED WITH THE CLERK OF COURT.

But no article can be uſed as evidence at the trial, which has not been deſcribed and given notice of in the libel, and which has not been lodged with the clerk of court in ſufficient time before the trial, for examining and inſpecting it [c]. Deſcription in the libel.

[a] Hume, vol. iv, p. 210.

"Thus, if writings are found, "though unſigned, in the pannel's "own poſſeſſion, and referable to "tranſactions, in which he can be "ſhewn otherways to have had "an active concern, or if letters "ſigned with his name, are diſ"covered in the poſſeſſion of his fa"miliar friend, and anſwers thereto, "addreſſed to him, are found in his "own poſſeſſion; or if the minutes "are produced of the proceedings of "a meeting, whereof the pannel was "a member, and to which he is "proved to have been choſen ſecre"tary or clerk; and in any of theſe "caſes, if his hand be ſworn to by "a competent number of credible "perſons, who have cauſe of know"ledge on that head; this ſeems to "be ſuch a proof as there is no ſound "reaſon for diſtruſting. Accordingly, "in the trial of Campbell of Burnbank "(March 29, 1721), for falſehood and "conſpiracy, where the libel reſted "in a great meaſure on a writing in "which Campbell, for a ſum of mo"ney, received from Muſchet, obli"ged himſelf to produce two affi"davits of the adultery of Margaret "Hall, Muſchet's wife; the authen"ticity of this material document "was proved chiefly by ſimilitude of "hand. The pannel's handwriting "was eſtabliſhed in ſome meaſure "by the like means, in the trial of "James Stein for bribery; as alſo in "the trials of Skirving and others "for ſedition, in 1793 and 1794.

[b] Hume, vol. iv, c. 14.

[c] In the noted caſe of Smith and Brodie, Auguſt 1788, the libel gave notice that a *bank note* for 5l. was to be uſed in evidence againſt them; but in this purpoſe the proſecutor

§ 3. ARTICLES EXHIBITED

Towards the better telling of their ſtory, witneſſes may exhibit the articles of which they are ſpeaking: for example, one who has got poſſeſſion of the ſtaff with which he was aſſaulted, may ſhew it when he depones, that the violence which he ſuffered may be better underſtood; but if no notice has been taken of this inſtrument in the libel, he cannot leave it with the clerk, to be ſworn to by other witneſſes whereby the ſtaff itſelf would become part of the proof and a ſubſtantive article of evidence againſt him [a].

§ 4. OATH OF PARTY.

§ IV. "PROBATION by oaths of parties," ſays lord Stair, "hath a moral ground, and a ſcriptural warrant. The former is, that as men are obliged to perform all duties towards men, ſo they ought not to refuſe to acknowledge the ſame, ſo that the other party be obliged to acquieſce and not further to ſtrive or contravert. The ſcriptural warrant is, that *an oath for confirmation is the end of all ſtrife;* and therefore, as men are obliged to remove the ground of ſtrife, ſo they are obliged to give their oaths when theſe are neceſſary, for removing it. Strife doth comprehend, not only contending by force, but contending by law."

No man's oath is evidence in his own favour, unleſs touching thoſe particulars which are *referred* to it by the adverſary [c]; who muſt previouſly not only renounce every other mode of proof, but (if required) ſwear that he knows of no probative writing by which he may make good his plea. Should the parties mutually refer the point at iſſue to the oath of each other, it lies with the diſcretion of the judge

was diſappointed; becauſe the note in the clerk's hands was held not to be properly a bank-note, being the note of *a private banking-houſe* only, and not of any of the chartered and corporate banks.

[a] Ibid.
[b] Book iv, tit. 45.
[c] Erſk. book iv, tit. 2, § 3.
[d] Ibid. § 9.
[e] Ibid.

m depoſe who appears to have had beſt opportu- §4. OATH OF PARTY—VERITY.
wing the fact[a].

th is no evidence againſt third parties; not (Mr. Can it affect third parties.
inks) even againſt *correi*, or conjunct co-obli- Correi.

h is evidence againſt the referrer, only ſo far as Intrinſic.
ſic. Whatever is extrinſic in it is diſregarded as
averment of a party. Any quality, or ſpecial li-
hich cannot be ſeparated from the other parts
h, is called intrinſic; when it may and ought to Extrinſic.
d, it is called extrinſic. All qualities are intrinſic
e to the point referred in the oath; or, as Dirle-
eth it, are inherent in the thing in diſpute; or, to
mes' words, all facts and circumſtances that re-
a denial of the libel; becauſe if the libel be not
abſolvitor follows; or whatever are proper croſs
ries to a witneſs; for had the purſuer taken a proof
s, it would have been competent to the defender
s interrogatories, and the latter muſt not be cut
privilege by the former being choſen as the only
or if an agreement be referred to the oath of the
every circumſtance is intrinſic that imports it to
altered or paſſed from; for ſuch circumſtance is
pars ejuſdem negotii. But where an agreement is
d brought to its final concluſion, no after altera-
ted to the oath is intrinſic. Thus, where a bar-
horſe, with delivery, is referred to the defendant's

is he differs from Stair.
on, art. 25.
xample, "if a promiſe
erminate ſum be refer-
lefender's oath, and he
the promiſe was made
dition not yet perform-
ed, the oath is to be received with
the quality adjected to it, becauſe
the condition under which the pay-
ment was promiſed, was *pars nego-
tii*, and ſo not to be diſjoined from
the promiſe itſelf." (Erſk. b. iv
tit. 2, § 11.

§ 4. OATH OF PARTY—VERITY.

oath, in order to recover the price, if the bargain and deli very be acknowledged, which fulfil the bargain on the pur ſuer's part, an addition to the oath that the bargain was af terwards paſſed from, and the horſe redelivered, muſt b proved otherwiſe than by oath [a].

No man *in dubio* is preſumed to mean to refer facts, th proof of which lies upon the adverſary [b].

As a holograph bond, which is owned to be genuine, i a good document during the long preſcription (40 years), i if the defender, who is ſued after the *vicennial preſcription*, qualifies his acknowledgment of his ſubſcription by depoſing to payment, this is extrinſic [c].

STILL more clearly extrinſic is it, if the defender, neither denying his ſubſcription, nor the original conſtitution of the debt, ſhould only depoſe to his delivering goods, or diſ burſing money on the purſuer's account to the full amount of the debt. The reference *in dubio*, will not be preſumed to include ſuch a claim, or *mutua petitio*, of which (whether a ground of compenſation or not) it is incumbent on the de fender to bring legal evidence [d]. For the ſame reaſon, when *reſting owing* is referred to the oath of the debtor in a pre ſcribed bill, compenſation is extrinſic [e].

ON the other hand, ſuppoſe the defence of payment to b referred to the oath of the purſuer, if he qualifies his ac knowledgment of the receipt of the money, by adding tha it *was not in payment of the debt in queſtion, but on a ſepara*

[a] Elucidations, art. 25.

[b] Fountainhall, 22d Dec. 1702, Nicolſon. Forbes, 6th July 1711, Clerk. Erſk. b. iv, tit. 2, § 11.

[c] Erſk. Ibid.

[d] Ibid. Compenſation by the Roman law was an extinction of t debt; but by the law of Scotland does not operate *ipſa jure*. (Ibid.)

[e] Rankine againſt Adair, June 1799. Fac. Coll.

account; this is intrinſic; but if he admits receiving the money in payment of the debt, it would not avail him to depoſe that he had afterwards diſburſed it on the debtor's account. § 4. OATH OF PARTY—VERITY.

THE oath, if neceſſary to eſtabliſh the conſtitution of the debt, is competent to prove its extinction. In general, therefore, in a reference of a debt not conſtituted by writ, payment is an intrinſic quality. But the rule cannot include thoſe debts whereof payment ought naturally to be verified by written vouchers [a].

THE act of court is the warrant for taking the oath, and ought ſpecially to mention the particulars to which the party is to depoſe [b]. The party, therefore, who means to adject any qualities to his oath, ought to proteſt for a qualified oath; that is, that ſuch qualities may be held as part of his oath; and when the diet is aſſigned for his depoſing, he muſt declare in court ſuch ſpecial qualities or facts, which, if judged relevant, will be inſerted in the *act for proving* [c].

REFERENCE to oath may be made at any period of the cauſe. And, without any reference to oath, the adverſary may be called upon to confeſs or deny judicially the truth of particular facts. When may a reference to oath take place.

IF the oath be made in general or doubtful terms, particular interrogatories may be put for further elucidation; but ſo far as it is clear and particular, re-examination is not permitted.

THE oath, ſhould it afterwards appear to be falſe, may be

[a] Thus a tutrix, to whoſe oath certain articles of charge againſt her were referred, was not allowed to inſtruct the diſcharge by her oath, becauſe tutors ought to make no payments, unleſs in ſmall incidents, without written acquittances. Erſkine, Ibid.

[b] Ibid.

[c] Ibid.

§ 4. OATH OF PARTY—VERITY.

the foundation of a criminal proſecution for perjury [a]; but it finally and unalterably ſettles the civil point at iſſue [b].

REFERENCE to oath is not admiſſible in criminal proſecutions, where the conſequence may be to deprive a man of life, limb, or reputation. "It appears repugnant to the ordinary courſe of our practice, which even in civil matters "is actuated with a great fear of involving any one in the "guilt of perjury; that a perſon ſhould be placed in this "hard and trying ſituation, where conſcience is at war with "the ſtrongeſt propenſities of our nature [c]." Farther, in proſecutions for capital offences, though the puniſhment be reſtricted, in the particular caſe, to pecuniary penalties, the claim of right declares this mode of proof to be contrary to law [d]. "And we may warrantably conclude, both on the "reaſon of the thing, and the ſtate of practice, that it is "unlawful even to exact an oath from any one reſpecting "any charge which is proſecuted to affect his perſon or li-"berty; or which, though not inſiſted to that extent in the "particular caſe, is plainly of an infamous or diſhonour-"able nature [e]."—"And indeed, even in the laſt centu-"ry, the inſtances of abuſe, in this reſpect, ſeem chiefly "to have happened in proceedings relative to ſtate crimes "before the privy-council, and what were then called in-"quiſitions, rather than in the courſe of ordinary trial for "vulgar offences. And in this latter department," adds Mr. Hume, "all the inſtances I have obſerved of reference "to the pannel's oath, are in caſes where the ſubject of the "oath, though deciſive of the iſſue, was in a great meaſure

[a] It was not ſo by the Roman law, *jus jurandi contempta religio ſatis Deum ulterem habet.* (Lex. ii, cod. de jure jurando.

[b] Erſk. b. iv, tit. 32.

[c] Hume, vol. iv, p. 130.

[d] "That the forcing the lieges to "depone againſt themſelves in capi-"tal crimes, however the puniſh-"ment be reſtricted, is contrary to "law." (Declaration of the eſtates of the kingdom of Scotland. Ap. 11. 1689.

[e] Hume, vol. iv, p. 134.

§ 4. OATH OF PARTY—VERITY.

f a civil nature, and, according to the cuſtom of thoſe imes, might have been referred by the lords to the judgnent of a civil court; as in a proſecution for ſtealing orn, where the defence was, that it had been carried off y a lawful poinding; it was found relevant to prove, by he defender's oath, that the poinding was not lawful; in trial for wrongous impriſonment, on a caption after letrs of ſuſpenſion, it was found relevant to refer the panel's knowledge of the ſuſpenſion to his oath; in a proecution for cutting down ſixty great trees on the proſeutor's lands, the libel was referred to the pannel's oath. Upon the whole," Mr. Hume therefore, concludes, "I ink there is only room to inquire concerning thoſe in rior delinquencies, ſuch as aſſault and breach of the ace, which are not neceſſarily attended with infamy, nd are proſecuted for fine and damages only, whether e delinquent may not lawfully be conſtrained to abſolve r condemn himſelf by his oath. Yet even of this I have ot found any inſtance in the books of adjournal within at period which is chiefly intitled to regard in any conoverſy of this complexion [a];" and Mr. Hume mentions, farther confirmation of the ſame argument, that a parlar ſtatute [b] was neceſſary to authoriſe reference to oath competent mode of proof in the caſe of uſury, though om puniſhed but with patrimonial penalties.

HIS practice of applying a mode of proof, properly civil, he caſe of thoſe delinquencies which draw no deeper i fine and damages, probably originated from the double diction, criminal as well as civil, belonging to ſome inr judges: accordingly, Mr. Erſkine, when he ſtates, "oaths of verity cannot be urged againſt a defender in ny trial properly criminal, ſo as to compel him to depoſe gainſt himſelf," qualifies it by obſerving, that in treſpaſſes

[a] Hume, vol. iv, p. 132. [b] 1600, c. 7.

§ 4. OATH OF PARTY—VERITY.

"where the concluſion draws no deeper than the damage "of the party wronged, or a pecuniary fine, a party may "be compelled to ſwear, as in bloodwits *before an inferior judge*; and in injuries verbal or real;" and in a proſecution at the inſtance of the public proſecutor for the penalties under the ſtatute 1707, c. 13, againſt ſhooting hares, where the court of ſeſſion concurred with the ſheriff in finding the reference competent, the proſecutor, in his argument, expreſsly admitted that mode of proof to be incompetent, wherever "the facts alleged againſt the defender are "of ſuch a nature as to render him infamous, if proved, or "where the proſecution has been brought in order to the "infliction of a corporal puniſhment[b]."

But juſtices of peace are directed by the general ſtatutes 1617 and 1661 to employ this mode of proof in the caſe of thoſe delinquencies committed to their cognizance, to the effect of a pecuniary puniſhment. Thus the clauſe touching riots and breaking the peace, "for the more clear determi"nation of the order which ſhall be kept by the ſaid com"miſſioners in the deducing of any ſuch proceſs, declares, "that it ſhall be lawful to the ſaid juſtices, whenſoever they "have any occaſion to move any action againſt parties for "committing any like fact or riot, *to refer the firſt ſummond "to the party's oath of verity*, (in caſe of inlake of other law"ful probation) who being perſonally ſummoned by the firſt "citation, ſhall be holden as confeſſed, and decreet be pro"nounced againſt him conform to the decreet and ſum"monds." And in like manner the clauſe[d] reſpecting cutters of planting, and various other offences, declares, "the

[a] Feb. 13, 1634. See *ſupra*, p. 198, n. c. Fount, July 24, 1678; Gordon. lii.

[b] Procurator-fiſcal of the county of Edinburgh againſt David Wilſon, June 17, 1787. Fac. Coll.

[c] Appendix I, p. xvi, and xxxiv, in

[d] Ibid. p. liv.

l ſhall be by witneſſes, *oath of party*, and the puniſh- &c. § 4. OATH OF PARTY—VERITY.

atute has been ſucceſsfully pleaded, as ſanctioning of proof in offences not particularly ſpecified in l ſtatutes. Thus, certain perſons being proſecuted unwarrantable importation of Iriſh victual," were *ſed upon their not compearance*, and fined in the ſum erling each. This ſentence they brought under the the ſupreme court, among other grounds, pleading ices of peace committed iniquity in ſuſtaining the *ugh for a crime relevant to be proved by the ſuſpender's -Anſwered*, by § 9 of the act 1661, the juſtices of ay, upon a perſonal citation, without further ſo- hold the defender as confeſt as to all crimes and anours committed to their care."—"*The lords t there was no iniquity in ſuſtaining the libel relevant ved by their oaths* [a]." The ſame ſtatute was alſo the caſe of a proſecution for a petty riot or af- e a *borough court*, which had allowed a reference of o the defender's oath; and the judgment was af- the court of ſeſſion [b].

24, 2712; juſtices of ſhire of Ayr and their the town of Irving and bitants of that burgh.

1736; procurator-fiſcal gh againſt Archibald The libel ſet forth, "that ler did, at the croſs of , aſſault the ſaid James lling him by opprobrious l ſpit in his face, and de- to reſent it, if he durſt, in preſence of ſeveral here convened; which "expreſſions," the libel adds, "have "no other meaning than a challenge "to Mr. Stewart to fight him the "defender." The fiſcal reſtricted the libel to a pecuniary mulct, and referred the ſame to the defender's oath of verity, which the bailies found relevant; and upon his declining to depone, he was held as confeſſed. Againſt this judgment the defender preſented a bill of advocation, among other reaſons, pleading, "they did wrong in finding that his "oath was a relevant mean of proof; "as the giving a challenge to fight

§ 4. OATH OF PARTY—VERITY.

FROM the report of the caſe of Wilſon, mentioned above, it appears that one of the judges doubted "whether ſuch a "judicial tranſaction, as is implied in a reference to oath, "can be validly entered into by a procurator-fiſcal." But in all other caſes, which have been quoted above, and where the reference to oath was ſanctioned by the ſupreme court, the party was the procurator-fiſcal.

Can the procurator-fiſcal refer to the oath.

THIS method of proof is none of thoſe peculiarities of our law of which we have reaſon to be proud. In England reference to oath of party is ſaid not to be admitted in civil actions, far leſs in thoſe of a criminal nature; expoſing the party to diſgrace and puniſhment. Hence queſtions have ariſen concerning the competency of this mode of proving offences proſecuted under Britiſh ſtatutes [a]. To prevent calumnious ſuits and falſe allegations, litigants, or their counſel for them, ſo early as the reign of James I, were ordained to ſwear that the facts ſet forth by them were believed to be juſt and true [b]. Such oaths have not been much in uſe

"albeit no fighting enſue, is puniſh-
"ed with baniſhment and eſcheat of
"moveables, by the act 1696.—*An-*
"*ſwered*, by the 7th article of the in-
"ſtructions to the juſtices of peace,
"as contained in the 38th act of the
"parliament 1661, ſuch riots may be
"proved by the defender's oath, eſpe-
"cially as the libel is now reſtricted,
"of conſent, to a pecuniary mulct.
"*The lords found* it was competent to
"prove the libel by *Mr. Campbell's*
"*oath.*" (Clerk, Home.)

[a] See vol. ii, 545. The bad effects of multiplying oaths appear from the meaſures repeatedly taken by the general aſſembly from the year 1719 downwards, for impreſſing the people with the ſanctity of oaths, and the guilt of violating thoſe taken in matters of revenue. (Printed acts.)

[b] Parl. 9, 1429, c. 125. "Throw
"the conſent of the hail parliament,
"it is ſtatute and ordained, that ad-
"vocates and foreſpeakers in tempo-
"ral courtes, and alſwa the partie
"that they pleade for, gif they be
"preſent, in all cauſes that they
"pleade, in the beginning, or they be
"heard in the cauſe, he ſall ſwear
"that the cauſe he trowis is gud
"and leill that he ſall pleade. An
"gif the principal party be abſent
"their advocate ſall ſweare in th

e act of ſederunt [a]; by which any party, againſt matter of fact ſhall be pleaded, may be compelled, making oath, to confeſs or deny it [b]. § 4. OATH OF PARTY—CALUMNY.

ıs of calumny therefore, or of opinion of their be- reaſon for the action, are now confined to criminal ons at a *private* inſtance. It is not required of the roſecutor. If the purſuer declines to ſwear, the l deſert the diet of his libel; and farther, Mr. Hume inion, that the party "will have a good defence t any other the like libel for the ſame crime, which roſecutor may afterwards raiſe, although he ſhould e willing to confirm it with his oath [c]."

: evidence amounts not to abſolute conviction, but ſuſpicion only, it is called *ſemi plena probatio*; and in ſtions is eked out by the party's ſuppletory oath, eminent author conſiders to be the conſequence of neous principle, as he eſteems it, of the Scottiſh and law, in refuſing to give credit to one witneſs [d]. Such mmonly put by the judge, are uſual in actions for SUPPLE-MENT.

him, after as is conteined
neters:

r, quod lis ſibi juſta videtur,
tur verum, non inficietur.
tetur nec falſâ probatio detur.
tur, dilatio nulla petetur.

, 1715, § 6.
book iv, tit. 2, § 16.
ii, p. 204.
lone, book iii, cap. 23.—
the teſtimony of one wit-
gh ever ſo clear and poſi-
lena probatio, only on which
ce can be founded. To
therefore, the neceſſary
nt of witneſſes, when they
only to any ſingle fact, they admit the party himſelf (plaintiff or defendant) to be examined in his own behalf, and adminiſter to him what is called the ſuppletory oath; and if his evidence happen to be in his own favour, this immediately converts the half proof into a whole one. By this ingenious device, ſatisfying at once the forms of the Roman law, and acknowledging the ſuperior reaſonableneſs of the law of England, which permits one witneſs to be ſufficient where no more are to be had; and to avoid all temptations of perjury, lays it down as an invariable rule, that *nemo teſtis eſſe debet in propria cauſa*. (Black. book iii, cap. 23.)

§ 4. OATH OF PARTY—SUPPLEMENT.

payment of articles furniſhed by ſhopkeepers, where the quantity or the price is not proved by two witneſſes; in the caſe of a factor or ſteward's diſburſements, not well admitting of legal evidence, but appearing ſuitable to the management; proſecutions for the aliment of baſtard children, where there is no direct evidence of guilt; but ſuſpicious circumſtances only.

FEW branches of judicial duty are of more delicacy, or require a ſounder diſcretion, and greater caution than this. What circumſtances do, and what do not, amount to the proper *ſemi plena probatio*, varying with the endleſs variety of caſes, cannot be anticipated and circumſcribed by particular rules, but muſt be judged of when they occur. In general, however, it may be ſafely obſerved, that a very ſtrong preſumption, ariſing from the other circumſtances of the caſe, is indiſpenſible, to juſtify a meaſure, whereby otherwiſe unhappy individuals might be betrayed into the crime of perjury.

§ 5. WITNESSES.

V. WE have reſerved to the laſt, what lord Bankton[a] calls "evidence in the moſt proper ſenſe," viz. by witneſſes who, "in all controverſies, are adhibited to determine as a "common rule among all nations; which is confirmed by "the word of God, *in the mouth of two or three witneſſes let* "*every word be eſtabliſhed*; where, by every word, is under-"ſtood every allegiance to be proved[b]."

In what caſes competent.

THIS expreſſion of lord Stair's, "*all* controverſies," and "every allegiance," muſt be taken under great limitation.

Among the Romans.

Our early law.

Our early law, indeed, like the Roman, admitted teſtimony in almoſt every caſe. But the art of writing becoming more general, the field for teſtimony was narrowed. It is ſtill admitted in ſale, or barter, or loan, or location, and, in ſhort,

[a] Book iv, tit. 30, § 1. [b] Stair, b. iv, tit. 43.

in all other contracts and bargains relating to moveable subjects, and having known preſtations naturally ariſing from them[a]; in verbal and nuncupative legacies, to the amount of 100l. ſterling; and in ſuch verbal agreements as are not diſtinguiſhed by the name of any known contract, and where ſomething is to be mutually given or performed by the parties[b]. § 5. WITNESSES —IN WHAT CASES COMPETENT. In what caſes now.

Witnesses are competent evidence of the performance of ſpecial facts: for example, the delivery of corns, but not the payment of debts, contained in a written obligation, unleſs in the caſe of payment to a third party; and of facts not well admitting written evidence; for example, the nullity of a bond *ex dolo*[c]. When payment may be ſo proved.

Witnesses are perſons *legally cited* to give teſtimony. If they offer themſelves without a legal compulſitory they are rejected as *ultroneous*. The leader of the proof therefore muſt obtain a warrant from the judge for citing thoſe whom he wiſhes to examine. If the witneſs reſides beyond the particular diſtrict or county, it is neceſſary to apply for the authority of the ſupreme court, whoſe juriſdiction extends over all the kingdom. If they are in a foreign country, their evidence in civil matters may be taken by commiſſion, under the authority of the judge of the territory where they reſide. But neither the ſeſſions of the peace, nor the ſheriff, nor other inferior judge, have power to compel any inhabitant to go out of their territory to bear witneſs in a trial depending in ſome other county[d]. —ATTENDANCE OF. Ultroneous. Citation. Judge muſt grant warrant for citing witneſſes. If in a foreign county. Judge cannot compel witneſſes to go out of the juriſdiction.

[a] But it is rejected in all bargains, to whoſe conſtitution writing is eſſential, as in thoſe relating to land, or in which it is commonly uſed, as in the borrowing of money, or cautionary obligations.

[b] But in gratuitous promiſes it is abſolutely rejected, be the ſum ever ſo ſmall.

[c] Erſk. book. iv.

[d] From the communications with which I have been favoured, I learn that caſes have occurred where the ſeſſions of one county have, on the

§ 5. WITNESSES —ATTENDANCE OF.

Diſqualifications.

BUT a witneſs is not ultroneous becauſe he gives notice of himſelf as one who ought to be cited; nor even becauſe he comes of his own choice from England, or elſewhere, into the juriſdiction of the court to receive his citation, nor becauſe the citation is in ſome reſpects irregular; of which the witneſs is not preſumed able to judge.

BUT great care ſhould be taken of the regularity of the citation. If it be given without the proper warrant, or by one, who either is no officer, or who has not at the time his warrant upon him [a]; or if the witneſs be not rightly named and deſigned, both in the principal liſt of witneſſes and in the copy, not only is the witneſs excuſed of his outlaw, though he fail to attend, but the blunder may be taken advantage of by the adverſary to prevent his examination. There are no *inducie* in the citation of witneſſes [b].

application of the ſeſſions of another, granted their concurrence to compel witneſſes to go thither to give teſtimony, and have impoſed fines upon them for refuſing; nothing can be more illegal.

This is not all: I ſee from the records of the county of Edinburgh, that the ſeſſions of the peace attempted to exerciſe the ſtill more extraordinary power, (which belongs not to the ſupreme court) to compel an inhabitant, living within their juriſdiction, to go to England to give teſtimony.

2d Auguſt 1737. M. G. preſented a repreſentation by two juſtices of the peace of the county of Carliſle, requeſting the juſtices of peace of this ſhire to give their concurrence for ſending J. Ewart, watchman to the cuſtomhouſe, to Carliſle aſſizes, in order to be evidence againſt J. Nixon, to be tried for horſe-ſtealing. —Which being conſidered by the meeting, and they having called the perſon before them, *they ordered him to go to Carliſle, in terms of the above requeſt, under the penalty of* 10*l. ſterling*; and recommend to the preſes to ſpeak to the commiſſioners of the cuſtoms to appoint another in his place until his return; and *to write to the ſaid juſtices they would on all occaſions concur with them to puniſh ſuch offenders.* (Sederunt-book of the juſtices of the peace of the county of Edinburgh.)

[a] In one caſe where the witneſſes had all been cited on a notorial copy only of the letters, and not on the principal letters themſelves, or an extract of them, the proſecutor conſidering this blunder as fatal to the citation, moved to have the diet deſerted *pro loco et tempore*, which was done accordingly. (Alexander Durham; 15th March 1792.)

[b] Even in the practice of the high

witneſs, being duly cited, ſhall fail to attend, or offer § 5. WITNESSES —ATTENDANCE.
cient excuſe, he incurs a fine, or unlaw, as it is called,
hundred merks; and this whether he be cited per-
or at his dwelling-place only.

witneſs, whoſe teſtimony the party depoſes to be ma-
be afraid of perſonal execution for debt, he may ob-
om the court of juſticiary a protection for the neceſ- Protections.
ace of time, not exceeding a month; or from the
of ſeſſion a warrant for ſtopping the execution of let-
caption, or acts of warding.

England, where a witneſs is a priſoner in execution for In England what is the remedy.
he muſt be brought up by writ of *habeas corpus ad*
ndum to give his evidence [a].

THER the Scottiſh ſeſſions of the peace, nor indeed
her inferior judges, are in the practice of granting any
tions [b].

the party makes oath that the witneſs means to ab- If the witneſs means to abſcond.
in order to avoid giving evidence, warrant will be
d to impriſon him, either till he find caution for his
ance; or ſometimes (when there ſeems reaſon to
at he may forfeit his ſurety, or be tampered with, or
l of, or otherwiſe diſabled to appear) abſolutely [c].

f juſticiary, a critical and
ous accuracy is not indiſpen-
t the citation is void, if there
material variation, ſuch as
ſibly miſlead or deceive the
n his inquiries concerning the
al who is ſummoned.

was ſubpœned *ad teſtifican-*
d prayed a priviledge from
reſted, which was granted;
he court it will ſuperſede an
arreſt upon meſne proceſs, but not upon an execution; yet the ſheriff, in that caſe, may be committed for his contempt. (Nevil's caſe, 15, c. 2. Trials per pais, 310. Burn.)

[b] In this particular the anſwer from all the counties was the ſame; no ſuch thing either was at preſent, or was remembered ever to have been practiſed.

[c] In the caſe of John Ker and He-

§ 5. WITNESSES—ATTENDANCE OF. WITNESSES, when poor, ought to be paid their neceſſary expences, if not indemnified for their loſs of time and trouble.

Engliſh law IN England this matter is regulated by ſpecial ſtatute; by virtue whereof the ſeſſions "from time to time lay down "and alter ſuch rules and regulations concerning any coſts "or charges to be allowed to any perſon by virtue of this "act as to them ſhall ſeem juſt; which rules and regula- "tions having received the approbation and ſignature of one "or more of the judges of aſſize, ſhall be binding on all per- "ſons whatſoever [a]."

len Yorſtoun, two gypſies, July 20, 1714, the court of juſticiary, "in re- "ſpect that the above named John "Ker and Helen Yorſtoun are not "able to find caution to the effect "above mentioned; therefore ordain "the ſaid John Ker and Helen Yor- "ſtoun to be carried back to the tol- "booth of the Canongate, there to "remain until the event of the trial "above mentioned; the petitioner "paying the ſaid perſons their ex- "pences during the time of their im- "priſonment."

But it will occur that extraordinary caſes requiring impriſonment *abſolutely*, belong moſt properly to the ſupreme tribunal.

[a] Burn, tit. Evidence. This power is expreſsly conferred on them by § 9, 18 Geo. III, c. 19.

Lord Swinton inſerts this clauſe as extending to Scotland; obſerving, that clauſes 4th to 8th incluſive, apply only to England. The 8th clauſe is as follows: "The court where any "perſon ſhall appear on recogniſance "or ſubpœna, to give evidence as to "any grand or petit larceny, or "other felony, whether any bill of "indictment be preferred or not, "may order the treaſurer to pay to "him ſuch ſum as they ſhall think "reaſonable, not exceeding the ex- "pences he was *bona fide* put unto; "making alſo, if he ſhall appear to "be in poor circumſtances, a reaſon- "able allowance for his trouble and "loſs of time; which order the "clerk of aſſize, or of the peace, re- "ſpectively, ſhall forthwith make "out, and deliver to him, on being "paid for the ſame ſixpence, and no "more; and the treaſurer, upon "ſight of the order, ſhall forthwith "pay the ſame." A witneſs was ſerved with a ſubpœna at Cheſter to attend the ſittings at Guildhall, and two guineas were tendered by the perſon who ſerved it; and being objected to as too little, he declared he would give no more. The witneſs not coming up, an attachment was moved for, but on ſhewing cauſe was diſcharged; the court ſaying it was too little, and that the witneſs is not obliged to truſt to the courts allowing him more when he comes to the book; for perhaps the party may not call him, and then it may be difficult for him to get home again.

§ 5. WITNESSES —ATTENDANCE.

WITH us the allowance to witneſſes was regulated by act of ſederunt; the rate varying as the witneſs rides or walks; but he is intitled to no allowance if he puts the party to the trouble of obtaining a ſecond diligence [a]. Theſe rates were fixed ſo far back as the year 1760; and by a late deciſion it was found that witneſſes were not legally intitled to demand more [b].

Rates with uſe of paying witneſſes.

NOTWITHSTANDING this, however, the latter practice, both of the ſupreme and inferior courts, conſtrues it liberally, increaſing the allowance ſo far to make up for the great fall in the value of money.

[a] Sederunt, 21ſt December 1765. "The lords of council and ſeſſion "conſidering, that for many years "paſt the practice has been to modify the expences of witneſſes to the "ſum of eightpence per day to each "witneſs who travels on foot; and to "the ſum of one ſhilling and four-"pence per day to each witneſs who "travels on horſeback; and conſider-"ing that the rate of hire of horſes, "as well as the price of all ſorts of "proviſion, have now increaſed to "ſuch a height, that the ſums above "mentioned are by no means ſuffi-"cient to indemnify witneſſes; they "do therefore enact and declare, that "in time coming all witneſſes ſhall "be intitled to the allowance of one "ſhilling ſterling per day for their "perſonal charges; and that ſuch "witneſſes as travel on horſeback, "over and above the foreſaid allow-"ance, ſhall be intitled to the addi-"tional ſums following, viz. to the "additional ſum of one ſhilling and "ſixpence ſterling for each travelling "day, and to the ſum of one ſhilling "and twopence ſterling for each day "they ſhall be detained in court af-"ter their appearance upon the cita-"tion, till they are examined and "diſmiſſed; and that the number of "travelling days ſhall be aſcertained "by a reaſonable computation, ac-"cording to the diſtance of the wit-"neſſes' place of reſidence; and the "ſaid lords authoriſe the ordinaries "upon the oaths and witneſſes for "the time, or either of them, or the "ordinary in the cauſe, if the wit-"neſſes are called on an incident di-"ligence, to iſſue ſummary warrants "as formerly againſt the agents of "the party adducer of the witneſſes "for payment of the charges hereby "allowed them; provided always, "that nothing herein contained ſhall "intitle witneſſes who do not give "obedience to the citation, but are "brought into court by a ſecond di-"ligence to any charge; and ordain "this preſent act to be recorded in "the books of ſederunt, and publiſh-"ed in the uſual form."

[b] 3d December 1794, Gordon againſt Macfarlanes. Fac. Coll.

§ 5. WITNESSES SWEARING OF.

IF the witneſs does not appear on the day fixed by the warrant of citation, a ſecond warrant (called letters of *ſecond diligence*) is granted, which is of the nature of a caption, containing a command to the meſſenger, whoſe name is filled up in the warrant, to apprehend him, and bring him before the court [a]. If he be unwilling and unable to travel, it is competent, in civil queſtions, to examine him on commiſſion, as if he were in a foreign juriſdiction. If, after an action is begun, either party is afraid of loſing a witneſs, from old age, or infirmity, his depoſition may be taken immediately, to lie ſealed up with the clerk [b].

Compulſory proceſs.

If he fails to attend.

If he refuſes to ſwear.

IF he appear, and there be no objection offered, it is next neceſſary for the judge to put the oath to him. If he refuſes to take the oath, it is conſidered as a contempt which the court may puniſh by fine or impriſonment [c]. Holding up his right hand, the witneſs ſwears, "that, as he ſhall anſwer to God "at the day of judgment, he will tell the truth ſo far as it "ſhall be aſked of him;" a cautious and temperate form, inquiring not into his particular creed; whether of the eſtabliſhed church or a ſectary, Jew or Mahometan; requiring only his belief of a God and a future ſtate; and rejecting none who can conſcientiouſly join even in the pagan creed, *diverſo itinere malos a bonis loca tetra, inculta, fœda atque ſor-midoloſa habere* [d].

Form of the oath.

Its liberality.

English form.

IN England, again, the form is, by laying the hand on the New Teſtament, and kiſſing it; thus requiring the profeſ-

[a] Erſk. b. iv, tit. 2, § 30.

[b] Ibid. § 31.

[c] Lord Preſton was committed by the Engliſh court of quarter-ſeſſions, for refuſing to be ſworn to give evidence to the grand jury on an indictment of high treaſon; and on his being brought by *habeas corpus* into the king's bench, chief-juſtice Holt ſaid it was a great contempt; and that had he been there, he would have fined him, and committed him till he paid the fine, but being otherwiſe, he was bailed. (1 Selk. 278. Burn, tit. Evidence.)

[d] Cato apud Salluſt. Cat. c. 52.

§ 5. WITNESSES—SWEARING OF.

ſion of Chriſtianity at leaſt, upon the principle, as ſir Edward Coke expreſſeth it, "that all *infidels* are in law perpe-"tual enemies; for between them, as with the devils, "whoſe ſubjects they be, and the Chriſtian, there is per-"petual hoſtility, and can be no peace [a]."

But though this Chriſtian oath was ſettled in very early times, yet Jews, before the 18th of Edward I, when they were expelled the kingdom, were permitted to give evidence at common law; and were ſworn, not on the Evangeliſts, but on the Old Teſtament [b]. No diſtinction was taken between their ſwearing in a civil and in a criminal caſe.

In later times, the nature of an appeal to heaven, which ought to be received as a ſanction to evidence, has been better underſtood; and the Engliſh judges have adopted the more liberal notion, that there is no particular form eſſential to an oath to be taken by a witneſs: but as the purpoſe of it is to bind his conſcience, every man of every religion ſhould be bound by that form which he himſelf thinks will bind his own conſcience moſt [c]. Accordingly, not only have witneſſes been ſworn in England without kiſſing the book, and in the Scottiſh form, by holding up the right hand merely [d], but Jews upon the Old Teſtament, Mahometans upon the Alcoran [e], and Gentoos, and other pagans, according to the ritual preſcribed by their reſpective ſuperſtitions [f].

Jews. Mahometans. Pagans.

[a] 7 Co. 17, A. Calvin's Caſe. Peake, p. 90.

[b] Lord Mansfield. Cowper, p. 388.

[c] Lord Mansfield's Speech, in Atcheſon v. Everett. Cowper, p. 288.

[d] Dr. Owen, vice-chancellor of Oxford, refuſed to be ſworn by laying his right hand on the book, or kiſſing it, but cauſed it to be held open before him, and lifted up his right hand: the jury prayed the opinion of the court; and Glen, chief-juſtice, told them, that, in his opinion, he had taken as ſtrong an oath as any other witneſs. (Leache's Crown caſes, 459. Peake, 92.

[e] Buller's Niſi prius, 292. Burn, tit. Evidence, § 111.

[f] Peake, ibid.

The commiſſary court repelled the

§ 5. WITNESSES —SWEARING OF.

THE ſame liberal way of thinking that began to prev in theſe kingdoms after the revolution gave birth to t *toleration act* [a], which, though not general, was very exte ſive in the relief it afforded to ſcrupulous conſciences. Tl act, taking notice of the ſect called *Quakers*, which h Quakers. ſprung up during the troubles, and one of whoſe ſcrupl was the taking an oath, according to the form preſcrib by the law of England, enabled them to give aſſurance their fidelity and allegiance to the ſtate, by a differe form [b]; and was followed in about ſix years by another ſt tute [c], which allows a quaker to *affirm* in caſes whe *other perſons* are required to take *an oath*; whereas befo that period the law had conſidered their ſcruples of co ſcience as a crime, and did not allow them to be ſet u as an excuſe or juſtification of another offence. This, fi a temporary act for *ſeven* years only, was [d] afterwards con nued for eleven years [e]; and was made perpetual by ſtat. Geo. I, § 2, c. 6; which again was explained and enla ged by the ſubſequent ſtatutes 8 Geo. I, c. 6, and 22 Ge II, c. 30 [f].

THE breach of an affirmation is puniſhed with the pai of perjury. Indeed, being a moſt ſolemn appeal and atte ation to God of the truth, an affirmation is in ſubſtan the ſame thing as an oath; the form only is different.

objection to the examination of Latchimo, the negro, that he was not a Chriſtian. The judgment was affirmed both by the court of ſeſſion and houſe of peers. See Hamilton's Deciſions, No. 55.

[a] 1 William and Mary, c. 18.

[b] § 10.

[c] 7 and 8 William III, c. 34.

[d] By ſtatute 13 William III, c. iv.

[e] In the year 1713, there was an application to the houſe of commons to make it perpetual, but it was jected. An application was aft wards made to the houſe of lo who paſſed the bill, and it w down to the houſe of commons, they would not give it even a reading. See the *four laſt years queen Anne*, by Dr. Swift, who, obſervable, commends the houſe commons for the oppoſition t gave to the act.

[f] Appendix I.

§ 5. WITNESSES—SWEARING OF.

THE original ſtatute 7th and 8th William III, c. 34, is *generally* expreſſed; in the firſt ſection, giving the quakers a right to affirm in all caſes whatever, where another man may take an oath, and only inſerting it by way of exception that he ſhall not be admitted in a criminal caſe: no variation has been made by ſubſequent ſtatutes as to this particular. This exception was regretted by lord Mansfield [a]; and in England it is held that it ought not to be extended by equitable conſtructions; wherefore "their affirmations "are received in penal actions, as for bribery; and lord "Mansfield lays down generally, that an affirmation is not "refuſed, where the action, though in form a criminal ac-"tion, in ſubſtance is a mere action betwixt party and "party [b]."

THE ſame conſtruction of theſe ſtatutes muſt obtain in this country. The affirmation therefore of quakers would be received in all penal actions, concluding only for damages, or a ſum in *ſolatium*, to the private complainer.

SUPPOSE, then, quakers to be cited on a criminal trial, and refuſe to give oath, ſhall they, like other perſons, be committed for a contempt? "Neither of the acts diſpenſe "with a quaker's giving evidence in a criminal caſe; and "an attachment will go upon refuſal. But he might now "ſay, the toleration acts indemnify me, *and take notice of* "*my ſcruples*.

"FOR after the act of toleration, it was ſettled in the "caſe of ſir Thomas Harriſon, chamberlain of the city of "London, *verſus* Evans, purſuant to the opinion of all the "judges, except one, that a *diſſenter* from the church of

[a] He obſerved, "it is not poſſible "to ſay why the exception was "made." Atcheſon v. Everett.—Cowper, 391.

[b] Chriſtian, note 14 on Blackſtone, b. iii, p. 369.

§ 5. WITNESSES —SWEARING OF.

" *England* is not guilty of a *crime*, barely by having that " religious opinion.

" QUAKERS, therefore, ſince that action, are not in the " eye of law guilty of a crime, by ſaying, that ſincerely " they cannot ſwear according to our form of oath. It is " a fair excuſe for them, and a reaſon for diſpenſing with " the uſual form; otherwiſe, by reaſon of their ſcruples, " they would be impriſoned for life, for you cannot take " their anſwer upon interrogatories [a]."

Does the exception extend to others.

THIS indulgence granted by the tolerant principles of the Britiſh conſtitution to religious ſcruples, is not extended to rank or dignity, or individual conſideration; neither peers

Peers, &c.

and lords of parliament, nor the firſt officers of the crown, and dignitaries of the church, can bear evidence either in civil or criminal cauſes without being ſworn like other ſubjects. Inſtances have occurred in England of noblemen refuſing to take the oath being committed as for a contempt [b].

Sovereign.

THE royal dignity does not permit the ſovereign to ap-

[a] Lord Manſfield's Speech. Cowper, ibid.

[b] In the reign of Charles I it was unanimouſly reſolved by the houſe of peers, that the nobility of this kingdom, and lords of parliament, are of antient right to anſwer in all courts *as defendants* upon proteſtation of honour only, and not upon the common oath.

But where a lord of parliament is to give teſtimony, it has been often ruled that he muſt be ſworn; otherwiſe what he ſpeaks is not evidence, nor can he be puniſhed for perjury.

But Mr. Woodeſon obſerves, it is not clear that a peer can be compelled to take the oath. "If this be law " in civil actions, as it is aſſerted in " one book of authority (1 Freem. " 422), it ſeems ſtrongly to demand " ſome remedial alteration. In cri- " minal proſecutions I preſume the " courts would enforce, at the peril " of commitment, the atteſtation of " peers for the juſt detection of the " guilty, and neceſſary acquittal of " the innocent." Woodeſon, vol. iii, p. 275. (1 Salk. 278. 2 Hawk. 152.

2

§ 5. WITNESSES —SWEARING OF.

pear in court and be ſworn; and therefore it has been ſaid that the king cannot be witneſs for or againſt his ſubjects [a].

Purgation *in initialibus.*

BEFORE examining the witneſs *in cauſa*, it is cuſtomary for the witneſs to *purge* himſelf of malice and ill-will to the party againſt whom he is cited, of all receipt, or promiſe of good deed, or reward, for his evidence, and of all inſtruction how to *depone*.

What ſort of enmity diſqualifies.

BY the *firſt*, the witneſs is not underſtood to ſwear that he is a well-wiſher to the party, or has never had any quarrel with him, but that he has no ſuch malice againſt him as would lead him to give falſe evidence againſt him. This *oath of purgation* will make him an admiſſible witneſs; unleſs the party can ſhew that the witneſs bears him *capitales inimicitiæ*, or *mortal malice*, originating from an adequate cauſe, and appearing by ſubſtantial acts and deeds of hoſtility againſt him [b]. Leſſer degrees of enmity may affect his credibility.

THE *ſecond* extends even to the offer of bribes, though rejected by the witneſs; which, if it has been made by, and with the knowledge of, the proſecutor, deprives him of

[a] The certificate of James I, under his ſign manual, was received in evidence in a chancery ſuit without exception. But the legality of admitting this evidence has been queſtioned by high authority; and in the ſecond year of his ſucceſſor, the houſe of lords referred it to the judges, whether, in the caſe of treaſon, the king's teſtimony is to be admitted. But his majeſty prohibited them from giving their opinion. (7 Par. hiſt. 43.

[b] Feb. 10, 1763, Trial of Spalding of Aſhentully. It was ſuſtained to diſqualify J. Rattray, that he had indulged in vindictive expreſſions againſt the pannel, had been engaged in various feuds with him, and had once been preſent at an aſſault of him by a party of men in arms. 1788, Edgar Wright tried for an aſſault. The chief witneſs was found to be diſqualified by the circumſtance that he had fired a piſtol at the pannel with intent to kill him. Hume, vol. iv, p. 171.

§ 4. WITNESSES—SWEARING OF.

the benefit of the witneſs in *odium corrumpentis*. But if a *third* party, a magiſtrate, for example, ſhould ſo far forget his character as to give the witneſs aſſurances of pardon, in caſe of the conviction of the culprit, he is indeed guilty of a wrong, which, how culpable ſoever, yet cannot take away the intereſt of the private complainer, and much leſs of the public proſecutor [a]. It is no ground of diſqualifying a witneſs that he was public informer [b]; but if he is intitled as informer to a pecuniary reward on conviction, that would appear to detract ſo far from his credibility [c].

By inſtruction to depone, is meant, not only the expreſs and corrupt tutoring of a witneſs in a particular ſtory that is exceptionable, but every practice or contrivance which may tend indirectly to conſtrain or give him a bias in telling his ſtory; ſuch as, to write him letters on the ſubject of his teſtimony; to furniſh him with narratives of the fact; to ſend him notes or obſervations on the caſe; to take private and written accounts from him of what he can ſay, and the like; all which practices are more exceptionable ſtill, if they are uſed after his citation as a witneſs. And though it may be true that irregularities of this ſort may not in every inſtance have the effect of ſetting aſide the witneſs, who may happen to be a perſon *optimæ opinionis*, and above all ſuſpicion, yet are they always dangerous and prejudicial proceedings, for which the party ſhall be liable to cenſure, and muſt always detract ſo far from the credit of the witneſs [d].

But communications before citation being often neceſſary,

[a] So it was held in the caſe mentioned above, of Brodie, where an allegation of this ſort was made with reſpect to Andrew Ainſlie. Hume.

[b] Hume, vol. iv, p. 154.

[c] Ibid.

[d] A witneſs (Aitken) being about to be examined was objected to, that he had been turned off for malpractices and had imputed that to the advice of the party againſt whom he was cited to depone, ſo that he could not be conſidered as impartial, and it was agreed that the examination ſhould be delayed till the matter ſhould be inquired into. Upon this, the agent

are not viewed in the ſame light [a]. In order to know whom to cite as witneſſes, it is neceſſary to inquire of third parties what they know of the matter. But the law is jealous of any communication with the witneſs after citation. § 4. WITNESSES —SWEARING OF.

ACCORDINGLY, the court of ſeſſion did not find it ſufficient to exclude the evidence of certain perſons *that* they had been previouſly *precognoſced* before a juſtice of the peace at the inſtance of a purſuer of a civil action, although the court expreſſed their ſtrong diſapprobation of taking precognitions in civil cauſes [b]. But the explanation of the duty of juſtices of peace, with reſpect to precognitions, will come under our particular notice afterwards.

for the purſuer told the witneſs, who was waiting in another room, that this objection had been ſtated, and held ſome other converſation with him on the ſubject of the cauſe. And when this conduct of the agent afterwards came out in the examination of the witneſs *in initialibus*, it was ſtated as a bar to his admiſſibility.

The commiſſioner made aviſandum with the objection, anſwers, &c. to the court, who (though they acquitted the purſuer's agent of all bad intention) had no doubt of the validity of the objection, and found Aitken could not be examined *hoc ſtatu*. 19th Jan. 1799, John Cadell againſt Mr. John Morthland and John Johnſton. Fac. Coll.

[a] Thomas Durham brought an action againſt Thomas Mair for deſamation; in which the latter adduced as a witneſs Alexander Wardrop, formerly his clerk, who being examined *in initialibus*, depoſed, "that before "he left the defender's ſervice, and "long before he received any citation "as a witneſs, he drew up a paper, containing an account of all the facts "which he knew with regard to the "cauſe, and likewiſe of other particulars which did not come within his "knowledge; and that he ſigned the "paper at the deſire of the defender, "and delivered it to him, and has "not ſeen it ſince." The commiſſaries, "in reſpect of the teſtimony of "Alexander Wardrop *in initialibus*, "found him diſqualified from being "a witneſs in this cauſe."

The defender, in a bill of advocation, ſtated, that the writing had been drawn up by Wardrop merely in the capacity of his clerk, for the purpoſe of being ſent to his agent in the cauſe, and that he had no objection to its being deſtroyed before the witneſs was further examined. The lord ordinary having taken the point to report on memorials, the lords unanimouſly repelled the objection; 10th February 1798, Thomas Durham againſt Thomas Mair. Fac. Coll.

[b] 26th Feb. 1793, James Wemyſs and others againſt William Wemyſs. Fac. Coll.

§ 5. WITNESSES —SWEARING OF.

WHERE one offers a relevant objection againſt a witneſs, of which he cannot bring inſtant proof, it can be no bar to his examination; but in ſuch caſe the party objecting may, immediately before the party makes oath, proteſt for a *reprobator*, i. e. proteſt that he may be allowed afterwards to bring evidence in ſupport of his objection. Actions of reprobator were admitted by our former practice, though no ſuch previous proteſtation had been entered, ſo long as ſentence was not pronounced in the principal cauſe in which the witneſs had depoſed; but in the caſe of the intermediate death of other witneſſes who could have ſworn to the ſame facts, that action was not admitted without ſuch previous proteſtation, even where the principal cauſe was ſtill pendent [a]; for there the producer of the witneſs, who ſaw no objection offered againſt his teſtimony, had reaſon to reſt upon his evidence; whereas if proteſtation had been entered by the adverſe party, he might have brought others then alive in ſupport of his allegation [b]. But by the preſent practice, which is not ſo favourable to thoſe actions, they are received in no caſe where they have not been previouſly proteſted for, even though he who produced the witneſs cannot ſhew that he has ſuffered any prejudice by the intermediate death of others [c]; from a preſumption that the party who inſiſts for the reprobator, if he truly had a ſufficient objection againſt the witneſs, would have entered the uſual proteſtation before his making oath. When proteſtation is properly made, the action of reprobator is competent, even after ſentence pronounced in the principal cauſe [d].

Proteſt for probator.

As the witneſſes are ſucceſſively called into court to be examined, they are preſented to the pannel, who is deſired to ſay, with reſpect to each of them, whether he has any

Proper time for objecting to them.

[a] Fount. 13th July 1700. Goodin.
[b] 6th Feb. 1679, Irvine.
[c] Home, 46.
[d] Erſk. book iv, tit. 29.

objection to him as a witneſs. This is the proper time for ſtating every objection, of whatever ſort, to the witneſs. How far one would be precluded from ſtating afterwards objections ariſing from irregularities, which are eſſential defects in the proceſs, and impoſitions on all concerned (as the perſonating a witneſs) is a queſtion of more difficulty. In ſuch a caſe there is no room for preſuming implied conſent.

§ 5. WITNESSES —DISQUALIFICATIONS.

HAVING ſaid ſo much about the manner and time for making objections to witneſſes, it may be proper to inquire more particularly wherein ſuch relevant objections conſiſt.

THE early law of moſt countries ſeems to have been ſcrupulous reſpecting the admiſſion of witneſſes. Balfour[a] gives us a minute liſt of objections, in his days regarded as diſqualifications; but which have ſince been conſiderably abridged.

THE ſame change is ſaid to have taken place in the practice of our neighbouring country. "We do not ſit here," obſerved lord Mansfield, "to take our rules of evidence "from Siderfin or Keble[b]."

AMONG diſqualified perſons our old law included the whole female ſex, who came afterwards to be admitted in particular caſes *cum nota*. Mr. Erſkine politely tries to apologize for the excluſion, as not being a *debarring* of them from imagined *incapacity*, but an *excuſing* of them, to ſave them trouble. The more reaſonable practice of later years admits the teſtimony of women in every caſe[c].

BUT there are objections which are ſtill regarded, and

[a] Practics, p. 380.
[b] Peake's Law of evidence, pref. p. v.
[c] Erſk. book iv, tit. 2, § 22.

§ 5. WITNESSES —DISQUALIFICATIONS.

theſe may either be to the credit or to the competency o the witneſs. "No two words have been more frequentl "confounded together, and conſequently leſs underſtood "than thoſe of *competent* and *credible* [a]." Objections to th competency of a witneſs, if ſuſtained by the court, exclud him altogether from giving his teſtimony. Objections t his credit only leſſen the credibility; ſuch a witneſs is fai to be allowed *cum nota*. "The expreſſion of credible wit "neſs is often uſed in acts of parliament; but this leave "the queſtion of his competency as before, and means no "thing more than that the magiſtrate ſhall judge, as th "jury would do, of his credibility; which they muſt de "cide on according to the oppoſing or corroborating cir "cumſtances of the caſe [b]."

Competent and credible.

WITNESSES muſt be poſſeſſed of ſuch underſtanding a enables them to know the obligation of an oath, and to re tain in memory the events which they witneſs; hence th firſt objection to a witneſs is incapacity.

Incapacity.

A PERSON who is conſtantly in a ſtate of derangement, o is ſubject to frequent returns of his malady at ſhort intervals cannot ſafely be relied on as a witneſs. But if he has onl at times been deranged, at long intervals, it ſeems probabl that his teſtimony may be taken at leaſt *cum nota*, concern ing any matter which has fallen under his obſervation in hi ſeaſon of ſound health; more eſpecially if it be a recen matter: provided always that no fit of derangement has inter vened [c].

[a] Peake's Law of evidence, p. 83.

[b] Idem, p. 83, 84.

[c] Hume, vol. iv, c. 13, § 1, where ſome deciſions of the court of juſticiary are quoted, particularly that of H. Adam, who was proved to have been frequently furious, and ſometimes bound, on account of his diſorder but having had no return of it for period of at leaſt four years, he wa received *cum nota*.

The teſtimony of a pupil is reject ed, becauſe he is preſumed ignoran of the nature and impreſſions of a

§ 5. WITNESSES —DISQUALIFICATIONS.

BESIDES, on ſpecial occaſions, where, from the nature of the charge, perſons of earlier years are neceſſary witneſſes, and are capable alſo of underſtanding the matters in which there is need of their evidence, the court may, and do take, their examinations without an oath, *ut proſint ad veritatem indagandam*; leaving it with the jury to put that degree of faith in their relation, to which, on weighing the matter and manner thereof, and all the circumſtances of the ſituation, it ſhall juſtly ſeem intitled [a].

Children under age examined without ſwearing them.

"IN England," it is ſaid, "there ſeems to be no preciſe "time fixed wherein they are excluded from giving evi- "dence, but it will depend in a great meaſure on the ſenſe "and underſtanding of the child, as it ſhall appear on ex- "amination to the court. However, it ſeems to be ſettled, "that a child under the age of ten ſhall in no caſe be ad- "mitted; but after that age, if the child appear to have "any notion of the obligation of an oath, after there has "been a foundation laid by other witneſſes to induce a ſuſ- "picion, the child ſhall be admitted to prove the fact. "Doubtleſs, the court will more readily admit ſuch a child "in the caſe of perſonal injury (ſuch as rape), than on a "queſtion between other parties; and perhaps in ſuch caſe "would even admit the infant to be examined without "oath; for certainly there is much more reaſon for the "court to hear the relation of the child, than to receive it "at ſecond hand from thoſe that heard it ſay ſo [b]."

Infamy.

WITNESSES may be diſqualified by defect of character as well as underſtanding. Infamy is either *facti*, or *juris*. The

oath. But a minor may be received as a witneſs in relation to occurrences which happened during his pupilage, if he was at the time of ſuch occurrences of an age ſufficiently capable of diſtinguiſhing facts. Erſk. book iv, tit. 2, § 22.

[a] Hume, vol. iv, c. 13.

[b] Burn, vol. i, p. 656. Law of Niſi pr. 293.

§5. WITNESSES —DISQUALIFICATIONS. latter alone renders a witneſs inadmiſſible. The other affects his credibility only. The witneſs in ſuch a caſe is admitted *cum nota.*

INFAMIA juris, or *legal infamy*, ariſes only from conviction in courſe of law of ſome crime inferring infamy. But this conſequence, we have already ſeen, will not ariſe from a ſummary conviction, without a jury, before inferior courts, ſuch as juſtices of peace, or magiſtrates of burghs.

Manner of proving *infamia juris.* THIS conviction muſt be proved in the beſt and moſt authentic manner, according to the cuſtom of the country where it has taken place. In this country there muſt be an extract, or official copy, of the proceedings and ſentence, under the hand of the clerk of court; in England and Ireland it is proved by, what they term, an exemplification, which is not complete without the ſeal of the court [a].

Effect of a pardon in England. IN England a pardon does away the ſentence and conviction, and makes the culprit an admiſſible witneſs. "With "us, on the contrary, and perhaps with as good reaſon, a "pardon is conſidered only in the former point of view, "and does not waſh away that ſtain of infamy, which, in "certain caſes, is the conſequence of conviction [b]." An actual pardon muſt be ſhewn under the great ſeal, the warrant for it under the ſign-manual not being ſufficient [c].

[a] In the caſe of the trial of Joſhua Deane for coining halfpence, it was objected that he had been convicted, and had ſtood in the pillory, for the like crime in Ireland; in evidence whereof the pannel produced a copy of the proceedings, ſigned, as he ſaid, by the proper officer, and he offered to examine witneſſes who had ſeen this man undergo the ſentence of the law; the lord advocate inſiſted that, by the cuſtom of Ireland, the ſeal of the court was neceſſary to authenticate theſe proceedings; and though witneſſes might prove that the man had ſtood in the pillory they could not prove the cauſe why nor the tenor, of the ſentence. Deane was received accordingly; 1729, Sept. 26. Hume, vol. iv, p. 159.

[b] Ibid.

[c] Peake, p. 87. Where the ſame

§ 5. WITNESSES —DISQUALIFICATION.

In England, according to the preſent practice, relationſhip, except that of huſband and wife, which is a total diſqualification, affords an objection only to the credibility. The father may be a competent witneſs againſt the ſon, and the ſon againſt the father [a]. And our own law is now inclined to a leſs jealous rule than formerly. Relationſhip.

In the *firſt* place, in all proſecutions at the inſtance of the fiſcal or public proſecutor, his neareſt connections are competent witneſſes.

In the *ſecond* place, where the private party is proſecutor, it would be very preſumptuous to ſpeak poſitively, when Mr. Hume has ſaid, that he found nothing in the books of adjournal to ſerve him as ſure ground for any expoſition of the law. Where only damages, or ſome peculiar intereſt, is concluded for, and for which the public proſecutor could not inſiſt, he thinks it probable that "his near "relations are receivable only when neceſſary, and even "then with reſervation of their credibility [b]." And he mentions a deciſion of the court of juſticiary to this effect, in the caſe of a nephew to the wife of a purſuer, of an action of damages for an aſſault. In an action of divorce by the huſband againſt the wife, the court of ſeſſion refuſed to admit her mother, brother, and ſiſter, as witneſſes for her [c]. What is the caſe where the individual inſiſts for the ends of public puniſhment and example, is ſaid by Mr. Hume to be ſtill a nice queſtion, not ſettled by deciſions, and upon which he does not pretend to deliver any poſitive opinion.

further obſerves: In the caſe of conviction of perjury, on the ſtatute of Eliz. 5, c. 9, nothing but a reverſal of the judgment can render the perſon a competent witneſs, for the ſtatute has made his incompetency a part of the puniſhment.

[a] Burn, tit. Evidence, § 3.

[b] Ibid. p. 144.

[c] Jan. 21, 1797, Bell againſt King.

§ 5. WITNESSES —DISQUALIFICATIONS.

WHERE the fiſcal and private party are joint p Mr. Hume mentions two deciſions, from which it that the public proſecutor does not loſe his right to the neareſt relations of the private purſuer.

Relations of the pannel or defender.

THE pannel, or defender's relations, have no ex from appearing as witneſſes againſt him. Even a an admiſſible witneſs againſt his parent; "although "not compel him, if he feel that juſt reluctance "an office, which may put him in hazard of pe

Huſband and wife.

The relation of huſband and wife is the only ex Neither of them is receivable againſt the other, though no *declinature be* pleaded. As no one can neſs for himſelf, it is ſaid by the Engliſh lawyers t of courſe, that huſband and wife, whoſe intereſts has united, are incompetent to give evidence in b each other, or of any other perſon whoſe intereſts ſame; as if two perſons are jointly indicted for a the wife of the one cannot be admitted as witneſs other [b]. And the law conſidering the policy of n alſo prevents them from giving evidence againſt eac by the reaſon of the implacable diſſenſion that a rouſed by it, and the great danger of perjury fro the oaths of perſons under ſo great a bias, and the hardſhip of the caſe. Yet an exception has been in the caſe of treaſon; and where the proſecution brought on account of ſome injury done to the wife as where either huſband or wife have cauſe to dema ties of the peace againſt each other [d].

Where the wife can be a witneſs.

Concubine.

IT is clearly ſettled in England, that a woman, not lawfully the wife of a man, though ſhe has been,

[a] Ibid.
[b] Rex V. Frederick and Tracey, 2 Strn. 1095. Peake, Ibid.
[c] Hume. Ibid.
[d] Burn. Ibid.

married to him, may be a witneſs againſt him; as in an indictment for bigamy, the firſt marriage being proved by other witneſſes, the ſecond wife may be examined to prove the marriage with her, for ſhe is not *de jure* his wife: but on an indictment for bigamy, after a marriage, in fact, has been proved, a former wife is no witneſs to prove her marriage, becauſe ſhe is legally his wife [a].

§ 5. WITNESSES—DISQUALIFICATIONS.

Bigamy.

THE rule of law does not merely prevent a huſband or wife from giving evidence for the purpoſe of criminating each other; it farther precludes them from giving any evidence which has the leaſt tendency to it, or directly affects the civil rights of either.

IN a civil action, they are no more permitted than in a criminal one to give any evidence, which, in its future effects, may criminate each other; and this rule is ſo inviolable, that no conſent of the other party will authoriſe the breach of it. But in civil actions, where neither is a party, the wife may be called as a witneſs to prove facts which may eventually charge the huſband [b].

IN like manner, the law reſpects the confidential communications made for the purpoſe of defence in a court of juſtice. Counſel, agents, or other procurators, are not permitted to diſcover the ſecrets of their clients, though they offer themſelves for that purpoſe: for it is the privilege of the client, and not of the legal practitioner. It is contrary to the policy of the law to allow any perſon to betray a ſecret with which the law has intruſted him.

Counſel and agent.

[a] Bull. N. P. 287. Peake, 123.

[b] Peake, ibid. Thus in an action againſt the daughter's huſband for her wedding cloaths, her mother was permitted to give evidence; which ſhewed that they were delivered on the credit of the mother's huſband. (Williams v. Johnſon, 1 Stra. 504.)

§ 5. WITNESSES —DISQUALIFICATIONS.

BUT this does not apply to ſuch things as may be reveaed without breach of the truſt repoſed in him on the particular occaſion. Such perſons may be examined as to what they knew before their employ; or to a fact of their own knowledge, and of which they might have had knowledge without being employed in the cauſe; as, ſuppoſe him witneſs to a deed, he ſhall be examined to the true time of execution[a].

TUTORS and curators are, from a like ſuſpicion of partiality, accounted improper witneſſes for their minors and pupils, but they may give teſtimony againſt them. And as ſuch behaviour on the part of the witneſs, with relation to the trial itſelf, as indicates too forward and buſy a temper, as by ſearching for evidence, propoſing the charge, ſuggeſting inquiries, or adviſing how to conduct the proſecution[b], may be reduced under the head of partial favour and affection.

Intereſted.

STILL leſs can a perſon intereſted in the queſtion be a witneſs. An intereſt is, when there is a certain benefit or advantage to the witneſs attending the determination of the cauſe one way. It muſt be a preſent intereſt; a future contingent intereſt will not be ſufficient to prevent him from being a witneſs; "yet it is certain that the repelling a witneſs is not confined to an immediate intereſt; for if he be called to a matter, where he claims under the ſame title, though he be not affected in that action, yet he ſhall not be admitted; and that is the caſe of commoners; or in an action on a policy of inſurance, any who have inſured on the ſame ſhip cannot be witneſſes. Yet in an

What ſort of an intereſt.

[a] In the trial of Thomas Wilſon for forgery, Jan. 23, 1790, Andrew Reid, cited as a witneſs for the crown, objected for himſelf, that he had acted as agent for the pannel in that trial.

June 1795, Mr. Charles Hay, advocate, was examined in the trial of ſir Archibald Kinloch, reſpecting circumſtances which had been communicated to him as counſel for the pannel's family, but prior to the fact which gave occaſion to the trial.

[b] Hume, vol. iv, p. 151.

§ 5. WITNESSES —DISQUALIFICATION.

"action by a master for beating his servant *per quod servitium* "*amisit*, the servant may be a witness, for he is not only not "interested in the cause, but not in the question; for there "the question is the loss of the service; and the action he "is intitled to is of a different kind [a]." For the like reason, in the case of deforcement, the private party, whose *diligence* has been hindered, is not a competent witness, Mr. Hume seems to think, not even in the lord advocate's prosecution, unless he will renounce that interest which the statutes give him, in the goods of the convict, both as *escheated* and for payment of his debt; and he thinks it doubtful, whether the same objection does not apply to one intitled as informer to a reward, payable on conviction [b].

But such an interest (naturally concomitant on the crime libelled, and arising out of the pannel's own act and deed) as that which one has to recover his goods lost by theft or robbery; or to prove the forgery of a bill, &c. will not render him an incompetent witness, though it may in certain circumstances affect his credibility. If the pannel raises a libel of recrimination against some of the persons in the prosecutor's list of witnesses, this will not render them inadmissible; they are allowed *cum nota* [c].

Socii criminis, though formerly rejected, are now allowed *cum nota*. In an action of divorce, on the head of adultery, the court of session rejected the evidence of the man with whom the woman was said to have been guilty. It was thought to place him under too urgent motives to perjury. But that decision was reversed on appeal [d].

[a] Baller, N. P. p. 283.

[b] And he mentions a case where such an objection was pleaded, and though no interlocutor appears in the record, yet the witness was not examined; and there being no more than one other witness to the fact, the pannel was of course acquitted. (Dict. vol. iv and viii, 1738.)

[c] Hume, ibid. p. 174.

[d] Hay Marshall. In this case the witness was brought forward by the

§ 5. WITNESSES —DISQUALIFICATIONS.

FOR in England, it ſeems to be underſtood, that ſecrecy is allowable in no other caſe but that of a legal practitioner, reſpecting facts ſtated to him for the purpoſe of conducting the cauſe; and, therefore, confeſſion to a clergyman for eaſing the culprit's conſcience, to a man's private friend, or to a phyſician, are not within the protection of the law [a].

Enmity.

—EXAMINATION OF.

WITNESSES ſwear to thoſe facts only of which they have an immediate knowledge and recollection. Witneſſes are not permitted to read their evidence.

IN England it ſeems to be held that they may look upon notes to refreſh their memory [b]. A witneſs may refreſh his memory with a copy taken by himſelf from a day-book; and if he can then ſpeak poſitively as to his recollection, it is ſufficient; but if he has no recollection further than finding the entry in his book, the book itſelf muſt be produced [c].

OUR practice diſtinguiſhes between notes taken at the time and on the ſpot when the tranſaction happened, and thoſe taken afterwards at a diſtance of time, by which a connected ſtory might be made up, not eaſily detected.

When opinion is evidence.

THOUGH witneſſes can in general ſpeak only as to facts, yet in queſtions of ſcience, perſons verſed in the ſubject, may deliver their opinions upon oath, on the caſe proved by the other witneſſes. Thus a phyſician, who has not ſeen the particular patient, may, after hearing the evidence of

defender. See Hamilton's Deciſions, No. 55, where the adulterer was found to be a competent witneſs for the purſuer.

[a] Hume, vol. iv, p. 186.

[b] Burn, tit. Evidence, § 5.

[c] Peake's Law of evidence, p. 136, where the defendant had ſigned acknowledgments of having received money in a day-book of the plaintiff, and the plaintiff's clerk afterwards read over the *items* to him, and he acknowledged they were all right; it was held that the witneſs might refreſh his memory by referring to the book, although there was no ſtamp to the *items* on which the receipt was written; for this was only proving a verbal acknowledgment, and not a written receipt.

e called to prove, on his oath, the general effects of lar diſeaſe, and its probable conſequences in the r caſe; for though not a particular fact, it is ſtill information, which the reſt of mankind ſtand in to enable them to form an accurate judgment on ct in diſpute a.

§ 5. WITNESSES —EXAMINATION OF.

xamination of witneſſes is a duty of no ſmall im- and difficulty. It is of conſequence to be ſo under- the witneſſes, that they may not omit any material nce of the caſe, and at the ſame time to avoid the d illegal practice of *leading queſtions*, or thoſe which he witneſs in the anſwer he is to give.

What queſtions cannot be put.

witneſs wiſh to explain or correct any part of his this may be permitted-*de recenti* b.

Can he explain his evidence?

NESS who has been precognoſced, is intitled to t he there ſaid, whether on oath or not, cancelled ring his evidence.

If previously precognoſced.

SSES muſt be examined ſeparately. The court of had occaſion lately of declaring their unanimous hat this was a rule of the law of Scotland not to ed from or relaxed c.

Examined ſeparately.

bid. p. 138.

, 1701. "Irving, who bill to the lords, pretend- things had eſcaped him, burdened his conſcience; ore prayed to be examin- onering thereof. The *ad the bill*; for by his is *a jus quæſitum* to the ich the witneſs cannot one has not been inter- lly, or has not deponed diſtinctly, he may be re-examined; but it muſt be at the deſire of the party adducer, and not upon the witneſs's own application, who may be ſuborned to retract." (Fountainhall.)

c December 1801. On occaſion of the objection to certain witneſſes, "that they had been *precognoſced* in preſence of each other; which will be noticed afterwards in treating of precognitions.

§ 5. WITNESSES—EXAMINATION OF.

WITNESSES are not obliged to anſwer any queſtions whic affect themſelves. *Prevaricating* witneſſes may be commi ted, and otherwiſe puniſhed, by the judge.

—ONE WITNESS.

"PROBATION," ſays lord preſident Balfour, "allenarl "be ane witneſs is not ſufficient of the law; *quoniam* "*ore duorum aut trium ſtat omne verbum* [a]." Though tl offence be even of a low degree, and how high ſoever in i ſelf the credit and character of the witneſs, yet ſtill the la is averſe to rely on his ſingle word. But in addition to wl was ſaid in ſpeaking of the oath in ſupplement, it may ou farther be obſerved, that this rule does not prevent the wa of a ſecond witneſs to the fact from being ſupplied the circumſtances of the caſe. If one man ſwear that

When one witneſs is evidence.

ſaw the pannel ſtab the deceaſed, and others confirm h teſtimony with circumſtances which correſpond to it, ſu as the pannel's ſudden flight from the ſpot—the blood o his clothes—the bloody inſtrument found in his poſſeſſion— his confeſſion on being apprehended;—ſuch circumſtances ar as good, nay, better even than a ſecond teſtimony to the act o ſtabbing [b]. And with reſpect to circumſtantial evidence, i is not "to be underſtood that two witneſſes are neceſſary t "eſtabliſh each particular; becauſe by the aptitude and co "herence of the ſeveral circumſtances, the truth of th "ſtory ſhall often be as fully confirmed as if all the wi "neſſes were deponing to the ſame facts [c]."—"Yet," ad the ſame reſpectable author, "I ſhall not affirm, that a ca "may not be imagined in which one circumſtance ſhall l "of ſuch peculiar weight, that an intelligent jury will no "ther convict on the other circumſtances without it, n "readily receive this important particular on the teſtimo "of one witneſs only, at leaſt unleſs he be a perſon abo "all ſuſpicion. But it belongs only to the aſſize themſel

[a] 6th July 1549; 1ſt July 1550; I. t. C. 1118. Prac. p. 373.

[b] Hume, vol. iv, p. 234.

[c] Ibid.

"to diſcern this ſituation when it ſhall happen, and not to "any lawyer to furniſh a rule before hand, by which to diſ- "tinguiſh ſuch a caſe from others." §5. WITNESSES —ONE.

THE evidence of ſingle witneſſes has been held ſufficient even to eſtabliſh ſeparate acts of the ſame crime [a].

§6. CIRCUMSTANTIATE, OR PRESUMPTIVE EVIDENCE.

VI. EVIDENCE founded on circumſtances alone, without any direct teſtimony to the fact in queſtion, is often irreſiſtible to the mind, and in many crimes is the only ſort of evidence that can ordinarily be obtained. But as in caſes of pure circumſtantial evidence it is always poſſible that the priſoner may not be guilty, or that the fact in queſtion may be otherwiſe, although every particular be true to which the witneſſes have ſworn, much caution and reſerve are neceſſary in founding entirely upon it. At the ſame time, however, ſuch is the difficulty of contriving an apt and coherent train of circumſtances, that perjury is by far the moſt eaſily detected in caſes of this deſcription [b]. Preſumptions are as various and unlimited as the facts themſelves, but are reduced by lawyers to three different claſſes; 1ſt, *juris et de jure*; or, 2dly, *juris*; or, 3dly, *hominis vel judicis*.

Its peculiarity.

Diviſion of preſumption.

THE preſumption *juris et de jure*, takes place where law

Preſumption *juris et de jure*.

[a] In July 1738. Thomas Soutar, and James Hog, miniſter of the pariſh of Caputh, were accuſed at inſtance of Hagart of Cairnmuir, of the crime of attempting to ſuborn falſe evidence againſt him; whereof the libel charged a number of inſtances which had happened at different times and places, with relation to different perſons. The jury "found, that the crime of ſubornation, or endeavouring to ſuborn "people to be witneſſes, as libelled "againſt the pannel Mr. James Hog, "proven in ſundry facts, each fact "only by one ſingle witneſs. As to "Thomas Soutar, the other pannel, "they found him art and part in the "ſaid ſubornation."—"Parties were "heard at large on the import of "this verdict; and the iſſue was, "that judgment paſſed againſt both "pannels for 250l. of damages and "expences, and baniſhing them from "Scotland for their lives."

[b] Ibid.

§ 6. CIRCUMSTANTIATE, OR PRESUMPTIVE EVIDENCE.

or cuſtom eſtabliſhes the truth of any point on a pr tion, ſo that its effect cannot be traverſed by any c evidence.

Preſumption *juris.*

PRÆSUMPTIO juris is taken for true, only till tl trary ſhall appear to the judge to be ſupported by ſ evidence.

Preſumption *hominis.*

PRÆSUMPTIONES hominis vel judicis, differ fro *ſumptiones juris* only in this, that the latter are laid d our ſtatutes, or eſtabliſhed by cuſtom or deciſions, w the former emerge from the various circumſtances ſpecial caſes, and have more or leſs weight with the according to the ſeveral degrees of evidence which the with them. They have frequently the force to over *præſumptio juris*, eſpecially when it is of that kind owes its whole force to the want of contrary evidence. a deed may be declared forged from a concurrence cumſtances tending to invalidate it, notwithſtanding tl ſumption of law that all deeds are genuine [a].

§ 7. GENERAL RULES.

VII. SOME things which did not fall under any foregoing heads, or were not ſo fully noticed as they d may be mentioned here in general, as acknowledged ples to direct us in judging of evidence.

1ſt, Not on private knowledge.

FIRST, then, no juſtice of the peace muſt be infl by his private knowledge, but muſt judge ſolely up evidence judicially laid before the ſeſſions.

FOR example, if a complaint be laid before the f againſt an individual, as guilty of poaching, any of t tices who happened to have ſeen him with his gun be a competent witneſs. But, ſitting upon the

[a] Erſk. b.iv, tit. 2.

he can neither lawfully communicate that private knowledge as a ground of deciſion to his brethren, nor proceed himſelf upon it. If ſufficient legal evidence be not laid before the judge, the defender muſt be acquitted. Although the extreme caſe can ſeldom occur, the rule in general is important, and the neglect of it produces much injuſtice and inconvenience. It opens a door to the very dangerous habit of being influenced by private prejudices. Every juſtice of peace, or other judge, who determines a cauſe without a jury, is himſelf an aſſize; and whatever may have been the idea formerly, it is now underſtood, "that no jury are warranted to convict, except on ſuch "proof as is external, if I may ſo ſpeak, to themſelves, "and ariſes from teſtimonies of guilt, which are publicly "produced to them, and not from the private knowledge of "the perſons of the aſſize, or any of them [a]."

§ 7. GENERAL RULES.

"FROM this power, it nowiſe follows, and far be it "from me (adds Mr. Hume [b]), to teach any ſuch doctrine, "that it can ever be warrantable to a jury to convict on "any, though apparently deciſive, evidence, if it is any how "known to themſelves, or any of them, to be falſe or in-"concluſive. But it cannot be inferred from this neceſſary "reſtraint, which to violate it in any caſe would be perju-"ry, and in capital caſes murder; that it therefore is al-"lowable to convict a perſon in reſpect of private know-"ledge, againſt whom no lawful evidence has been obtain-"ed [c]."

AFTER what was ſaid upon the equitable powers of juſtices, under the ſmall debt act, it need ſcarcely be added, that juſtices of peace proceed according to legal evidence; which may indeed be different in different caſes. Thus the oath of

2d, Muſt judge by legal evidence.

[a] Hume, vol. iv, p. 108.
[b] Ibid.
[c] Ibid. p. 110.

§ 7. GENERAL RULES.

the party in ſome caſes, and in others one witneſs is a able by ſpecial ſtatute, which makes it ſo far legal evid But the juſtices of peace have no powers to relax the of evidence; for example, to reſt upon the evidence o witneſs, how reſpectable ſoever, where two are neceſſar compel the defender to give his oath, where that is co to common law, and not commanded by particular ſtat

3*d*, The beſt evidence that can be had neceſſary.

IT is a general rule that runs through all the law o dence in all cauſes whether civil or criminal, that th evidence the nature of the caſe will admit of ſhall a be required, if poſſible to be had; but if not poſſible, the beſt evidence that can be had ſhall be allowed. I it be found that there is any better evidence exiſting t produced, the very not producing it is a preſumption would have detected ſome falſehood that at preſent is ceaſed.

No rule of law is more frequently cited, and more rally miſconceived, than this[a]. Evidence may be d into primary and ſecondary. The latter is as much *lega* as accurately defined by law, as the former. If the pr cannot be obtained, the ſecond is admiſſible. But the of *legal evidence* will not juſtify the admiſſion of what legal evidence; as intereſted witneſſes, or copies of c or, in caſe of the death or abſence of a material w evidence of what he may have ſaid before his death parture; the rule ſignifying only, that if the beſt *leg* dence cannot be produced, the next beſt *legal* evidenc be admitted. For though the party muſt produce th evidence he has it does not follow, that bad evide legal, merely becauſe he has no better.

Penuria teſtium.

THE nature of this rule, and the neceſſary limitat

[a] Chriſtian's Blackſtone, vol. iii, p. 367, N. 10.

§ 7. GENERAL RULES.

it may be illuſtrated by the latitude allowed in caſes of *pe-nuria teſtium* to examine perſons, whoſe relationſhip, or non-age, or other circumſtances, would make them inadmiſſible. *It* is not enough that there is a ſcarcity of good witneſſes, whether that be owing to accident, or the party's delay in bringing the action. The *penuria*, to have ſuch legal effects, muſt ariſe from the nature of the caſe; depending upon *occult facts*; which ſtrangers could not be expected to know, but they only who are connected with the family.

In like manner, as repelling entirely the evidence of children in the caſes of perſonal injuries (ſuch as rape), where the child is the party injured, would, in ſome meaſure, be denying them the protection of the law, the court will more readily admit children in ſuch caſes than on a queſtion between other parties; "and perhaps, in ſuch caſe, would "even admit the infants to be examined without oath [a]," but under all the caution that their levity and want of experience requires.

4th, Hearſay evidence.

Fourth.—The illuſtration uſed above naturally leads us to notice the very important rule againſt the admiſſion of hearſay evidence, except in a few caſes, the nature whereof admits not direct and poſitive proof; as in queſtions of pedigree, or of preſcription, or cuſtom; wherein the evidence of any one living witneſs, as to what paſſed within his own memory, would, in the one caſe, generally, in the other, always, be inſufficient. "Thus, in any diſpute about a right "of way, or road, or other right of ſervitude, declarations "made by the deceaſed tenant at the time he was poſſeſſed, "of whom he held, are good evidence [b]."

Hearsay is juſtly rejected; for no evidence is admiſſible

[a] Buller's *Niſi prius*, p. 293.
[b] Ibid. p. 295. Davis v. Pearce, 2 T. Rep. § 3.

§ 7. GENERAL RULES.

but what is on oath; and if the firſt ſpeech were with oath, another perſon's ſwearing that there was ſuch ſpee makes it no more than a bare ſpeaking, and ſo of no va in a court of juſtice. Beſides, if the witneſs be living, w he has been heard to ſay is not the beſt evidence.

THIS leads us to the reaſon of that deviation from rule which is admitted, where the perſon from whom witneſs had his relation of the facts is no longer living bear teſtimony himſelf; "and where this perſon was a "the beſt and moſt material of all witneſſes, the party f "ferer by the crime libelled, and gave his evidence un "ſuch *circumſtances as naturally lend it a more than ordin* "*degree of faith*. Thus in caſes of murder, our jud "have admitted evidence of the dying declaration of t "deceaſed, even though purely verbal; and ſtill more, "reduced into writing by any creditable perſon, with "ſpect to the manner and guilt of his death; juſtly co "dering, that ſuch material teſtimony, and given on ſo t "ing an occaſion, is of ſome weight in the ſcale of e "dence and ſound reaſon, as a circumſtance and preſun "tion of guilt, though not to be admitted as of equal va "with an oath admitted before the aſſize [a]."

5th, The affirmation muſt be proved.

FIFTH.—In every caſe the affirmative is to be proved. negative cannot regularly be proved; and therefore it ſufficient to deny what is affirmed until it be proved. I when the affirmative is proved, the oppoſite ſide may c teſt it with oppoſite proofs; for this is not properly proof of a negative, but the proof of ſome propoſition tally inconſiſtent with what is affirmed; as if one be proſec ed for an aſſault or intruſion, he need only make a gene denial of the fact; and if the fact be proved, then he p

[a] Hume, vol. iv. p. 226.

ing evidence of a propoſition inconſiſtent with the charge, § 7. GENERAL RULES.
that he was at another place at the time, or the like.

But to this rule there is an exception of caſes where e law preſumes the affirmative in queſtion; as in an ac- on againſt a magiſtrate, or other perſon, for an omiſſion of s duty; for a perſon is preſumed to execute his office till e contrary appear.

CHAP. VII.

Of the Process, Decree, and Review.

§ 1. SUMMONS, OR COMPLAINT.

I. HAVING already ſeen the general conſtitution this court; its criminal and civil juriſdicti and thoſe rules of evidence by which it muſt be gover it only remains, before leaving the ſubject of the ſeſſi to take notice of the forms obſerved in the procedure, the manner of reviewing and executing its decrees.

As the indictment, or criminal letters, in the court of ticiary are ſaid to be in the form of a ſyllogiſm, ſo to a tain extent the ſame is true of all writs, whether ſumm complaint, or claim, or libel, by which any cauſe is bro into court; containing, all of them, 1ſt, ſome legal tion, which is the *major;* 2d, ſome ſtatement in fact, w is the *minor;* and, 3d, the application of the law to the whether payment or puniſhment be in view, which i *concluſion.* And although the ſame ſcrupulous exactneſs not be expected in other courts, as in the criminal trial fore the juſticiary; yet in no caſe can attention to perſp ty, brevity, and preciſion, be ſafely omitted.

§ 1. SUMMONS, OR COMPLAINT.

ALTHOUGH in one ſenſe the juriſdiction of this magiſtra- be altogether ſtatutory, yet ſome branches of it, ſuch as it touching the exciſe, cuſtoms, ſtamps, game, &c. ariſe in particular ſtatutes; which therefore are the directory drawing the complaint or libel; examples are to be found Appendix II. It is only material to notice the neceſſity of ntion not to omit any of the acts; particularly the laſt tive to the matter of the complaint; otherwiſe penalties y be concluded for and inflicted in virtue of ſtatutes, ei- r wholly or partly repealed; a thing far from being with- precedent in practice, and ariſing from the multiplicity ſtatutes in many branches of the law, without any very ſpicuous difference from each other. But the inaccura- muſt render all concerned liable in high damages.

N other caſes, the form and concluſion vary with the na- of the action. But as the ſame ſort of cauſes come be- the different ſeſſions, ſo the ſame form of procedure, ſtile of the ſummons or complaint, ſeem to prevail; anſwers received from the different counties as to this icular being almoſt in the ſame words.

OMPLAINTS are generally ſubſcribed by the clerk; and party cited in virtue of a deliverance, ſigned by any one ge, on an *inducie* of ſix or more days. He appears ei- perſonally or by a procurator, when the cauſe is either ded on a *viva voce* argument, or a proof is allowed, or ten informations ordered againſt a certain day, when next meeting is to take place.

If the purſuer does not appear.

SHOULD neither the purſuer appear, nor any perſon for n, or a ſatisfactory apology be made in writing, the juſtices ll diſmiſs the action, and abſoilzie the defender with full pences.

IF the defender fail to attend by himſelf or procurator,

§ 1. SUMMONS, OR COMPLAINT.

the court in like manner will *hold him confeſſed*, and pronounce decree againſt him in terms of the libel. But if ſhall appear from the execution that he was not perſonal cited, then, agreeable to the direction of the general ſtatutes, the practice is to cite the defender *de novo* before the next meeting of juſtices; and upon a ſecond execution being returned, though not perſonally given, the juſtices *hold the defender as confeſſed*, in caſe he does not appear, and give decree againſt him, with expences.

If the defender does not appear.

IT is alſo in ſome places the practice for the party to ſtate his caſe fully in the form of a petition, which is appointed to be anſwered within ſix or ten days; and, with the anſwers, is laid before the juſtices; thus from the firſt the pleadings are in writing.

IN ſummary complaints, a petition is given in praying for ſervice, and the order is to give in anſwers within forty-eight hours, or three days, according to the diſtance of the party's reſidence. In all caſes, however, whether ſummary or ordinary, "there ought to be a competent time, leſs or more "according to the exigence of the matter [a]."

IN criminal matters of any importance, it is proper that the party ſhould not only be ſerved with the copy of a complaint to appear on an *inducie*, more or leſs as the thing may require, but the complaint ſhould narrate the particulars of the crime or delict committed, and the fine or puniſhment concluded for, and ſhould be ſerved on the defender at leaſt ſix days before the diet of compearance. "The conſtable "ſhould alſo cite the witneſſes neceſſary for probation; and "if required by the defender, he ſhall cite witneſſes at his "inſtance, giving the witneſſes a competent time for a

[a] Fullerton againſt Hamilton, 19th Nov. 1714. (Preſ. Dalrymple's Deciſions.)

"reading the diet of compearance; and the conſtable ſhall "give to the defender and witneſſes a ſhort copy of cita- "tion, and return an execution ſubjoined to the ſaid memo- "randum [a]."

§ 1. SUMMONS, OR COMPLAINT.

No preciſe rule, therefore, can be laid down, whether the litigation is conducted in writing or *viva voce*, which muſt depend upon the circumſtances of the caſe; but even where it is done *viva voce*, the reſult is minuted by the clerk.

Litigation, when conducted in writing.

In like manner, no preciſe rule can be laid down as to the taking of proof, whether in writing or *viva voce*. The general practice, however, is, on ordinary occaſions, to take it in writing, and generally by a commiſſion, or committee of juſtices, who report it to the next meeting.

Proofs, how taken.

By commiſſion.

The diets of the juſtices are not underſtood to be peremptory. A reaſonable ground of application for delay is never rejected.

Diets not temporary.

II. The ſhape and nature of the actions being various, the decrees, which follow thereon reſpectively, muſt vary alſo. But, in general, it may be obſerved, that, with the ſame exception as before, of matters regulated by expreſs ſtatute, ſuch as exciſe, cuſtoms, game, ſtamps, &c. in all private cauſes, that is, all cauſes where the object is pecuniary reparation to ſome private individual, the decree cannot be enforced by perſonal execution, which in the caſe of debt was not a compulſitory recogniſed by the ancient common law of this country; and ſtill leſs are a warrant for horning and caption, an extraordinary *diligence*, which even judges ordinary are armed with only by particular ſtatute.

§ 2. DECREE AND EXECUTION.

Not by horning and caption,

Nor by acts of warding.

The decree of the juſtices can be enforced by poinding

[a] Printed regulations for the county of Inverneſs.

§ 2. DECREE AND EXECUTION.

and arreſtment only. In ſome counties theſe proceed on a charge of fifteen days; in ſome of ten, and in others of ſix days. The mode of executing them, and farther particulars as to poinding and arreſtment, will more properly be noticed in explaining the duty of conſtables.

By poinding and arreſtment.

Impriſonment, when it takes place.

IMPRISONMENT does not follow the decree of the ſeſſion, unleſs, when, in the exerciſe of their criminal juriſdiction it is inflicted by way of puniſhment, or as the neceſſary compulſitory for payment of a fine; or in the exerciſe of their *preventive juſtice*, they employ it for ſecuring either the father of a baſtard, till he give ſecurity that the public ſhall not be burdened with the aliment; or the debtor *in meditatione fugæ*, that he ſhall not leave the juriſdiction to defraud his creditors.

Aliment of a baſtard.

ACCORDINGLY, ſuppoſe decree obtained for bygone aliment, in an action brought after the child is able to do for itſelf, it is not believed it could be inforced otherwiſe than by poinding and arreſtment.

BUT there is one exception. If the libel concludes, both for a fine to the public proſecutor, and damages to the private individual, it is the general practice of the ſeſſions, though with the exception of ſome counties, to impriſon till payment of both. This, though it may at firſt ſeem to deviate from principle, is agreeable to the practice of other judicatures, and indeed ariſes from the humanity of our law, and the apparent hardſhip that the public ſhould be provided in a more effectual compulſitory for obtaining payment of the fine, than the injured individual who bore the expence of the action, for obtaining indemnification.

BUT ſuppoſe the individual who has been aſſaulted, or otherwiſe injured, inſtead of having the ſanction of the pro-

§ 2. DECREE AND EXECUTION.

ator-fiſcal's concurrence, and concluding for a fine to the blic, ſhall bring the action in his own name alone, and nclude only for his own indemnification; in that caſe, it y rather ſeem he can have no compulſitory, but the ordiry one of poinding and arreſtment.

INDEED, it ſeems not free from ſome doubt, whether a mplaint in ſuch a form would be competent before the ſions; before whom the action is competent, chiefly as lice, or criminal magiſtrates; and, of courſe, as neceſſarisuppoſing public puniſhment as well as private reparation. here is no doubt of the competency of ſuch a complaint fore the judge ordinary, who has both civil and criminal niſdiction. The difficulty ariſes from the ſeſſions not havg civil juriſdiction. Mr. Hume, though he obſerves he uld find no inſtance of any libel in the pure pecuniary m being laid in the court of juſticiary, yet does not go e length of pronouncing it incompetent; and he obſerves, a "libel has been raiſed, which embraces both the pubic and private intereſt in its concluſions; here, though the former happen to be diſappointed, owing to the panel's plea of *res judicata*, or a royal pardon, or an act of indemnity, or the like, ſtill the action has its courſe for recovery of the proſecutor's damages and expences[a]." om this, therefore, we may rather conclude, that ſuch tions, at the inſtance of private individuals, concludg for private reparation only, are competent before the

[a] In the caſe of Adamſon and gilvie, 8th and 15th Auguſt 1732, ho were libelled for an aſſault t the inſtance of the lord adocate and George Home, the panels pleaded that they had already been puniſhed for this treſpaſs by the magiſtrates of Brechin, whereby his majeſty's inſtance was excluded; and as to the private intereſt of damages, that this was cognizable in a criminal court, *ob contingentiam*, only with the public intereſt, depending by proceſs there at the ſame time. But the lords, *simul et semel*, ſent the charge to an aſſize, and ſuſtained this defence as relevant to elide the libel *quoad vindictam publicam* only. (Hume, vol. i, c. 1, p. 46.)

§ 2. DECREE AND EXECUTION.

ſeſſions, if ariſing from thoſe breaches of the peace which would be competent before that court to the effect of puniſhment.

No decree can be put in execution till it be *extracted*, that is, a copy of the decree (or of the whole procedure, if the party may wiſh it, or the nature of the cauſe require it) made out and ſubſcribed by the clerk, and containing a precept, as the warrant for execution. By the ſtatute 2 Geo. I. chap. 26, it was provided, that, "and to the intent that "no perſon or perſons whatſoever, who ſhall be convicted by any civil magiſtrate, or court of judicature, "within that part of Great Britain called Scotland, of "any crime, importing a capital, or any other corporal "puniſhment, may be grieved by the over-haſty execution of ſuch ſentence, without allowing time for application to his majeſty, or to his heirs and ſucceſſors "for his or their gracious pardon; be it enacted by the "authority aforeſaid, that, from and after the firſt day "of June one thouſand ſeven hundred and twenty-five, no "ſentence or judgment of any civil magiſtrate or court of "judicature, importing a capital, or any corporal puniſhment, if pronounced in Edinburgh, or any other part of "Scotland to the ſouth of the Frith or river of Forth, ſhall "be put in execution within leſs than thirty days after the "date of ſuch ſentence; and if pronounced in any place to "the northward of the ſaid Frith or river of Forth, ſhall be "put to execution within leſs than forty days after the date "of ſuch ſentence: Provided, nevertheleſs, that nothing "herein contained ſhall hinder or diſable the courts of judicature, or any other civil magiſtrate, within Scotland, to "commit to gaol, and detain in cuſtody, in order to trial, "or in order to the execution of ſentences, as they by law "might have done, before the making of this act." But this long delay being found troubleſome, and a diſcouragement to the trial of petty offenders, it was abridged by the ſtatute 3 Geo. II, c. 32, which allows the inflicting of an

§ 2. DECREE AND EXECUTION.

puniſhment ſhort of death or demembration, after the expiration of eight days, or of twelve days from the date of judgment; as it is pronounced to the ſouthward, or to the northward of the Forth; ſaving always the right of applying to the court of juſticiary, who, or any of them, may ſiſt the execution of any ſuch ſentence of an inferior judge for the ſpace of thirty days, if there be cauſe for ſuch an interpoſition.

§ 3. REVIEW.

III. THE decrees of the ſeſſions of the peace, where ſtatute has not provided otherwiſe, are reviewable, like other inferior judicatories. Either the defender or purſuer may bring the judgment under review. The private proſecutor may do ſo, even on the footing that the puniſhment is not ſufficient *ad vindictam publicam*. But whether the ſame power belongs to the public proſecutor, who may be thought to have diſcharged his duty, by raiſing and proſecuting the libel before the competent court, and ſhould acquieſce in their judgment, has appeared to ſome more queſtionable.

—APPEAL TO THE QUARTER-SESSIONS.

IT may be proper to begin with appeal, the only method by which, of old, the judgments of inferior courts could be brought under the review of the ſupreme tribunals.

THE judgment of a common ſeſſions of the peace is brought under review of the quarter-ſeſſions by appeal, which does not ſtop procedure, if the ſentence appealed from be only interlocutory. The juſtices may proceed to the finiſhing of the cauſe by ſentence, though not to execution, till the determination of the appeal [a]. An appeal is not competent after execution.

[a] Kilkerran, p. 304. Meldrum contra Brown, 1746, December 23. "The lords were of opinion, that an "appeal to the quarter-ſeſſions does "not ſtop the juſtices from proceed-"ing and finiſhing the cauſe by ſentence; but that if againſt ſuch ſentence an appeal be entered, they "ſhould admit the appeal, and not "proceed to execution till the ſame "be diſcuſſed."

§ 3. REVIEW— APPEAL TO THE CIRCUIT-COURT OF JUSTICIARY.

AN appeal may be taken from a meeting, either of the co mon or quarter ſeſſions, to the circuit-court of juſticiary.

BY the ſtatute 20 Geo. II, an appeal may be taken to t next court of juſticiary againſt any final judgment of an i ferior judge within the bounds, not inferring death or c membration; or in civil cauſes, where the ſum or ſubje does not exceed 12l. ſterling. The words of the ſtatute not make any diſtinction, whether the appeal be taken to circuit-court, actually at the time ordained to be holden, a to the judges *nominatim*, who have been appointed to ho it, or, before any ſuch appointment, to the judges indefinit ly, who ſhall next hold ſuch a court for that diſtrict [a].

THE reaſons of the appeal to the circuit-court muſt b lodged with the clerk of the inferior court within ten da

[a] Hume, Crim. law, vol. iv, c. 18. Some argument on this point, but no deciſion took place in the caſe of M'Millan, who being prohibited by the magiſtrates of Glaſgow from working at the tailor buſineſs, without entering with the incorporation; and appealed to the circuit court, which was ſerved upon the purſuer on the 4th of October. The appeal was addreſſed, not to the judges *nominatim*, who were to hold the next circuit, which was not then appointed, nor generally to the lords of the circuit, or ſuch as ſhould officiate, but to the juſtice-general, juſtice-clerk, and lords commiſſioners of juſticiary. 7th October; the purſuer preſented a petition to the magiſtrates, praying them to allow their ſentence to go out, both in reſpect of the irregularity and of the incompetency of the appeal, as neither concerning a matter criminal, nor, if civil, under 12l. ſterling. On the 10th, the magiſtrates found the complaint neith competent on the merits, nor in pr per form. Therefore, refuſes to ſu tain the ſame, and allows extract the ſentence complained to go o four free days after intimation her of. A petition and complaint w preſented to the court of juſticia pleading, that the appeal was reg lar and competent, and, at any r that the magiſtrates could not co petently judge of its competency regularity. The court refuſed t deſire of the petition as incompet and groundleſs, and found the p tioner liable in expences; 1792; July. Mr. Hume remarks, tha there was any thing wrong, complaint ſeld to be made to judges on the next circuit ayr Glaſgow, who were to be judge the appeal is duly brought.

after the date of the ſentence; and a copy of them given to the other party, or his procurator, at leaſt fifteen days before the time of holding the circuit-court; and caution muſt be found alſo, at entering the appeal, to abide the judgment of the circuit-court, and pay the coſts. B. 3. REVIEW—APPEAL.

IT may ſometimes happen, that the purſuer when he is the appellant, may wiſh to ſecure the defender's perſon, that he may not eſcape ſuch ſeverer puniſhment as the higher court chooſe to inflict; in ſuch a caſe he has the ordinary remedy of a *meditatione fugæ* warrant, which will be treated of afterwards[a].

THE ſentence of the circuit-court is not ſubject to review; but caſes of difficulty, with the grounds of doubt, may be remitted to the whole judges of the court of juſticiary.

IF a perſon, after lodging an appeal, does not attend to follow it out, ſo that *proteſtation is admitted*, that is, the decree appealed from remains in force, the appellant is not precluded from bringing the matter before the other courts, if he previouſly indemnify the other party of the expence of the appeal.

1. ADVOCATION was originally the remedy where the judge was thought partial or incompetent, or refuſed, or delayed, to give juſtice. It is now uſually reſorted to any time Advocation

[a] Mr. Hume mentions an inſtance where this was granted, in the caſe of a proſecution, by one Stewart, and the fiſcal of the ſheriff-court, againſt James Coſſar, for an aſſault. The ſheriff ſentenced the defender to be impriſoned for one month. The proſecutor made a claim, in the form of an appeal, for damages alſo, and expences; and as the period of the confinement had nearly elapſed, inſiſted for warrant to detain his perſon till he ſhould find caution *judicio ſiſti judicatum ſolvi*. He was ordered to find caution *judicio ſiſti*.

§ 3. REVIEW—APPEAL.

before extract, even after a definitive ſentence has been pronounced to obtain redreſs, where the judge is thought (in law language) to commit iniquity, or pronounce an erroneous decree.

Does advocation ſtop procedure?

ADVOCATION ſtops further procedure in the inferior court, whether the ſentence complained of be interlocutor or definitive.

—SUSPENSION AND REDUCTION.

WHEN the cauſe is concluded by an extracted ſentence or decree, the proper remedy is ſuſpenſion, or reduction. The latter is the only remedy after execution. Thus a complaint being brought upon the 24 Geo. II, c. 34, the magiſtrates, as juſtices of peace within the royalty, fined the party 4l. ſterling, to be levied by diſtreſs and ſale of his goods. The party, after paying the fine, brought the matter before the court of juſticiary by appeal. "The court of juſticiary, in reſpect the appellant had already paid the fine, diſmiſſed the appeal, reſerving to bring a reduction [a]."

REDUCTIONS do not appear to have ever been attempted in the court of juſticiary, which has no permanent ſitting. Advocation and ſuſpenſion are the modes of obtaining a review either of the court of ſeſſion or the juſticiary court; of the latter, in all caſes where the juſtices act in a criminal capacity, inflicting either a pecuniary fine or other puniſhment; of the former, in all caſes whatever, not only decrees awarding pecuniary ſums to private individuals, but even of fines and other puniſhments inflicted *ad vindictam publicam*; that tribunal having a general ſuperintendence over inferior courts in the caſe of all ſuch offences as

[a] This muſt mean the court of ſeſſion, which is the only competent court for reductions.

§

diſorders as fall under the notion of breaches of the police [a]; and Mr. Forbes has reported ſeveral caſes, where fines impoſed by the juſtices were reſtricted by the ſupreme court as exorbitant [b]. § 3. REVIEW.

—EXTRAORDINARY.

In many of the cauſes which are competent before juſtices of peace, the legiſlature has thought proper in ſome caſes to make the ſentence of the juſtices final; in other caſes, to make them only reviewable in the manner preſcribed by the particular ſtatute.

THUS the review of the qurter-ſeſſions is excluded in all matters relative to the exciſe and cuſtoms. This was not very early underſtood. The ſeſſions were long in uſe to entertain thoſe appeals; and Mr. Forbes, where he ſays in exciſe matters the decrees of juſtices are final, means only to exclude the review of the court of ſeſſion, not the review of the quarter-ſeſſions; for, he obſerves, the court ſuperſeded extracting their own decree for a certain time, that the ſuſpenders might apply to the next meeting of the quarter-ſeſſions for redreſs. But, agreeably to the practice of England, the matter has long been fixed, and was laſt decided in the caſe of the collector of exciſe at Aberdeen againſt George Mollyſon [c]. The juriſdiction of the juſtices in exciſe matters does not originate from the *common-law* nature (ſo to ſpeak) of this magiſtracy, as created by the general ſtatutes, but from particular enactments, which muſt be its meaſure; and, of courſe, if no power of review be expreſsly given to the quarter-ſeſſions, they cannot interfere. On the ſame principle the ſentences of preſbyteries, in the exerciſe of their powers with regard to parochial ſchool-

[a] William Kerr and Agnes Shaw againſt Mathew Hays, 29th November 1774. Wallace, Deciſions.

[b] 1700, Jan. 19; juſtices of Wigtonſhire againſt Martine, &c.

[c] March 7, 1798. Fac. Col.

§ 3. REVIEW—EXTRAORDINARY.

maſters, under the ſtatute 1693, c. 22, are not review by the ſuperior church courts [a].

In other caſes, again, the appeal is to the quarter-ſe alone, and can go no further. But the particular inſt of extraordinary review, will fall more properly to b ticed under their reſpective heads. The extraordina view, obtaining in the caſe of the ſmall debt act, b mode of reduction before the court of ſeſſion, has be ready explained.

Extraordinary review not preſumed.

But the preſumption is always in favour of the revi the ſupreme tribunals, which the country has bee cuſtomed to look to for protection againſt the ignoran prejudices of local juriſdictions. Hence it was found, the words of the ſtatute 18 Geo. I, impowering juſtic peace to hear, and *finally determine* and adjudge offenc deſtroying trees and planting, do not exclude the revi the court of ſeſſion [b].

In like manner, even where the ſeſſions, or other in functionaries, are declared not to be reviewable in th erciſe of their ſtatutable powers, yet redreſs is to be ob ed from the court of ſeſſion, in caſes of unforeſeen dif ty, for which no proviſion is made [c]; or where the pe

[a] 26th Nov. 1793, Macculloch againſt Allan.

[b] 10th March 1754, Buchanan againſt Towant. Fac. Col.

[c] As, for example, an act paſſed in the 26 Geo. II, for repairing a road, running partly through Lanarkſhire, and partly through Dumbartonſhire. The truſtees differed about the direction. The appeal by the ſtatute was to the quarter-ſeſſions. An appeal was lodged with the q ſeſſions of both the counties gave oppoſite judgments. Th being not otherwiſe extricabl court of ſeſſion "repelled the "tion to the competency;" a "termined the direction o "road." 18th January 1764 ſel againſt Truſtees for repairi roads leading to Glaſgow. Coll.

given by the ſtatute have been exceeded, as happened in the caſe of commiſſioners, under the 19 Geo. III, adjudging a man beyond the age to the army [a]; and in the caſe of the commiſſioners, appointed by ſtatute 35 Geo. III, c. 9, inliſting an apprentice as a volunteer for the navy [b].

§ 3. REVIEW—EXTRAORDINARY.

[a] 15th June 1779, Patullo againſt ſir William Maxwell. Fac. Coll.

[b] Jan. 19, 1796, Cunningham and Simpſon againſt ſir George Home. Fac. Coll.

CHAP. VIII.

Of Conſtables.

§ 1. OF THE OFFICE IN GENERAL.

§ I. THE conſtable was an officer of great power high rank in feudal times [a]; and appears fr the laws of Malcom II, which mention his fees, to h been early known in Scotland. The 20 Geo. II, aboliſ the heritable conſtabularies, excepting that of high conſtal which is hereditary in the family of Errol.

THE lord high conſtable attended on great occaſions the king's coronation, and the like; regulated all matter chivalry; and beſides, jointly with the mariſchal, had preme itinerant juriſdiction in all crimes committed wi a certain diſtance from the court.

BUT our buſineſs is to explain the office of thoſe co bles who, while they are themſelves conſervators of

[a] The word, according to Lambard, is derived from the Saxon *konings-ſtapel*, the ſtrength of the kingdom; according to Spelman, Cowel, Blackſtone, (through the medium of the French), from the Latin *ſtabuli*, an officer well in the ca ſo called from his regulating to ments, and other feats of arms, w were performed on horſeback.

peace, are employed for carrying into effect various acts of parliament, and are the proper officers for executing the warrants, decrees, and orders of juſtices of peace. This lower conſtableſhip, ſays Lambard[a], "was at firſt drawn "and fetched from the other; and is, as it were, a very "finger of that hand." §1. OF THE OFFICE IN GENERAL.

But the conſtable, though fallen from his ancient grandeur, yet, having duties ſo various, difficult, and important, is ſtill an officer of great truſt and reſpectability, whoſe deficiency in knowledge, or deciſion, or activity, not to ſay fidelity, muſt be attended with much detriment to the community. Conſtables have important duties to perform in the execution of the laws relative to moſt of the branches of police; thoſe relative to religion and morality, trade and manufactures, and almoſt every other department of law of which this work treats. The explanation of thoſe duties muſt be found under their reſpective chapters: at preſent it will be neceſſary only to notice ſome things relative to the office in general.

II. CONSTABLES are appointed half yearly by the quarter-ſeſſions of the reſpective counties. The manner is ſo particularly deſcribed by the general ſtatutes, as to require little further explanation[b]. The juſtices are directed to chooſe two at leaſt in every pariſh, or more, according to their diſcretion, having conſideration of its extent. In great towns, likewiſe, not being cities or free boroughs, they are to appoint a ſufficient number of conſtables; but in all royal boroughs and free cities, magiſtrates are to chooſe them, and they are to endure and to be changed from ſix to ſix months. And whoever ſhall refuſe to accept this charge, or to give his oath for the faithful execution of the office, may be impriſoned and fined at the diſcretion of the juſtices of peace §2. MANNER OF CHOOSING CONSTABLES. Fine for not accepting. Oath.

[a] Of Conſtables, V. [b] See Appendix I, p. lxiv.

§ 2. THEIR APPOINTMENT. at their next ſitting. The conſtables, upon entering to the office, take an oath *de fideli* [a].

§ 3. CONSERVATORS OF THE PEACE. III. CONSTABLES, therefore, act either in virtue of their own powers as conſervators of the peace, or as officers to the juſtices; their duties in both capacities are very diſtinctly ſtated by the general ſtatute [b]. Conſtables are not mentioned in the ſtatute of queen Anne, 5, c. 6. But there is no reaſon to doubt, as lord Gardenſtone remarks, that it was intended to enlarge their powers as well as thoſe of juſtices [c].

Without a warrant. As conſervators of the peace, and without any warrant, it is the duty of every conſtable to interpoſe in caſe of any breach of the peace committed in his preſence; and to arreſt any man who, in his preſence, ſhall make an affray or aſſault upon another, or ſhall threaten to kill, beat, or hurt another, or ſhall be "in a fury, ready to break the peace" [d]. But where perſons barely contend with hot words, without any threats of perſonal hurt, it is ſaid he can do no more than command them, under pain of impriſonment, to avoid fighting [e].

Affrays.

Can he arreſt thoſe contending merely with hot words. THE conſtable thus is intruſted with a power over all actual breaches of the peace. He may ſuppreſs even thoſe acts of violence by which he himſelf is a ſufferer. If an aſſault be made upon the conſtable, he may not only defend himſelf, but may alſo impriſon the offender in the ſame manner as if he were no way a party [f].

AND if an affray or tumult be in a houſe, the conſta-

[a] See the form in Appendix I.— p. lxiv.

[b] Appendix I, No. VIII, part ii.

[c] MS. *voce* Affray.

[d] Dalton, c. i, 2. Hales, Hiſt. p. 86. Burn, *v.* Arreſt. Hawk. p. 137.

[e] Hawk. ibid. Burn, *voce* Affray, p. 19.

[f] Hawk. and Burn, ibid.

§ 3. CONSERVATORS OF THE PEACE

may break open the doors to preſerve the peace [a], or even to ſtop any diſorderly drinking or noiſe in a houſe at an unſeaſonable time of night, eſpecially in inns, taverns, or ale-houſes [b].

In purſuit of affrayers.

BURN adds, after Hawkins, that if affrayers fly to a houſe, and the conſtable follow with freſh ſuit, he may break open the doors to take them. Mr. Hume obſerves, there is no authority in our law to warrant a conſtable to break open doors in purſuit of one who flies after committing a breach of the peace. The act 1617, c. 8, rather directs him *to take notice of the maſter of the houſe, that he may be afterwards challenged for his contempt in refuſing admiſſion.* But, agreeably to the above obſervation of Lord Gardenſtone, it appears that the powers of Engliſh conſtables were communicated to Scottiſh conſtables, ſo far as relates to the preſervation of the public peace. Be this as it may, there is no doubt he may break the doors of any houſe in purſuit of a murderer, robber, or the like criminal.

By the law of Scotland, and in terms of 1617, c. 8.

Breaking open doors in purſuit of a murderer.

Muſt firſt demand admiſſion.

To juſtify the conſtable in making a violent entry into any houſe, and this holds equally though he bear a written warrant, he muſt firſt demand, and be refuſed, admittance, and muſt notify who he is, and the purpoſe of his coming [c].

Only does not puniſh the breach of the peace.

IT is the proper buſineſs of a conſtable to keep the peace, and not to puniſh the breach of it. He has no power, therefore, to arreſt a man for an affray, or breach of the peace, out of his own view, without a warrant from a juſtice, unleſs a felony were done, or likely to be done [d]. He cannot read the riot act. Neither can he require ſurety of the peace, unleſs the offence be upon his own view, and not

Can arreſt an affrayer only in his own preſence.

[a] 1 Hawk. 137. Burn, Affray, p. 19.

[b] 2 H. H. p. 95. Burn, Arreſt. p. 30. Hume, vol. iii, p. 118.

[c] Hume, ibid.

[d] 1 Hawk. p. 137. Burn, Affray.

§ 3. CONSERVATORS OF THE PEACE

if it be committed out of his ſight; for he cannot take a man's oath that he is afraid of death, becauſe he is not a judge of record. Hence the obligation taken by him ſhall be in his own name, and not in the king's name, and the ſame ſhall be certified to the ſeſſions of the peace [a].

May call for the aſſiſtance of the byſtanders.

A CONSTABLE is not only bound to interfere himſelf in arreſting thoſe who commit a breach of the peace, or other offence, but may call for the aſſiſtance of the byſtanders, who are puniſhable by fine and impriſonment, if they refuſe to aſſiſt him [b].

Powers of conſtables in apprehending vagabonds, Deſerters.

IN like manner, without any warrant, the conſtable is empowered to ſeize gypſies, vagabonds, and ſturdy beggars, by the 17 Geo. II.

A CONSTABLE may apprehend a deſerter, and bring him before the next juſtice of peace [c].

What is to be done after arreſt.

THE conſtable may carry the offender, whom he has arreſted, immediately before a juſtice, or he may impriſon him of his own authority for a reaſonable time, till the heat ſhall be over; and alſo afterwards detain him till he find ſecurity to keep the peace [d]. If the conſtable or his watch hath arreſted affrayers, or perſons drinking in an ale-houſe, diſorderly, at an unſeaſonable time of night, he may put the perſons in the ſtocks, or in priſon, till the heat of their paſſion, or intemperance, is over, *though he deliver them afterwards;* or till he can bring them before a juſtice [e].

May he impriſon him of his own authority, or muſt he carry him immediately before a juſtice.

Cannot commit for trial.

BUT it ſeems he has no power to impriſon offenders for

[a] Cro. Eliz. p. 375, 376. Burn, *vere* Conſtable, p. 468.

[b] Burn, Affray, p. 19. 1 Hawk. p. 137. 2 Hawk. p. 75.

[c] Tyler.

[d] 1 Hawk. p. 137. Burn, p. 19, Affray.

[e] 2 H. H. p. 95. Burn, Arreſt, p. 189.

any other purpoſe; for he cannot commit the offender to gaol to ſtand trial [a]. §. 3. AS CONSERVATORS OF THE PEACE

LORD KILKERRAN reports, that in the caſe of Meldrum, 1746, Dec. 13, the lords were of opinion that a conſtable might of himſelf apprehend and commit in order to trial for a crime without any warrant from a juſtice. This caſe, however, as Mr. Hume obſerves, did not call upon the judges to decide that point; and the inſtructions in the general ſtatutes 1617 and 1661, as much as the Engliſh authorities, would appear to intimate the contrary.

IV. THE conſtables are the proper officers of the juſtices of peace, by whom they are appointed, as well as removeable and puniſhable in caſe of miſdemeanour. So much are they the peculiar and appropriate officers of juſtices of peace, that where a ſtatute authoriſes a juſtice of the peace to convict a man of a crime, and to levy a penalty by warrant of diſtreſs, without ſaying to whom ſuch warrant ſhall be directed, the conſtable is the proper officer for ſerving ſuch warrant, and indictable for diſobedience [b]. In like manner, if an act of parliament direct a juſtice to grant a warrant, and doth not ſay to whom it ſhall be directed, by conſequence of law it is preſumed to be to the conſtable, and it cannot be directed to the ſheriff, unleſs ſuch power is given in the act [c]. §. 4. AS OFFICERS OF JUSTICES.

IT is thus the buſineſs of conſtables to execute citations of any claim or complaint before the juſtices; to cite witneſſes in thoſe caſes; to execute arreſtments, poindings, warrants of diſtreſs, &c. Citations.

IF the defender can be found perſonally, the conſtable If the party is perſonally found.

[a] 1 Hawk. p. 137. Burn, Affray, p. 19.
[b] 2 Hawk. 262. Burn, v. Conſtable.
[c] L. Raym. p. 1194. 2 Salk. p. 381. Burn. v. Warrant.

§ 4. As officers of justices.

ſhall give him the copy of citation. If he cannot be fo the conſtable ſhall leave the copy at his dwelling-houſe his wife, ſervant, or other perſon living in family with If he cannot get acceſs to the dwelling-houſe, he ſhould ter ſix audible knocks at the door of the houſe, leave i the key-hole.

Citation of witneſſes.

IF witneſſes are to be cited, he muſt give each of the ſhort copy of citation.

IF the defender has any witneſſes to adduce on his it ſhall be competent to the conſtable, on the defender ing him a note of them, to cite them to the ſaid die meeting; "to bear leal and ſouthfaſt witneſſing for the "fender in the claim or complaint at the inſtance of "againſt C D."

BUT conſtables are alſo employed in carrying the dec of the juſtices, when pronounced, into execution. We already obſerved that their decrees are no warrant for *a warding*, or *letters of horning and caption*. They are ca into effect by *arreſtment and poinding*; whereby the cred may affect the debtor's moveable (perſonal) property, in der to obtain payment of the ſums found due to him.

Arreſtment.

BY arreſtment, is ſometimes underſtood the ſecuri criminal perſonal for trial; but here, we underſtand the order of a judge, by which he, who is debtor in a m able obligation to the arreſter's debtor, is prohibited to m payment or delivery till the debt due to the arreſter be or ſecured.

Common debtor.

THE arreſter's debtor is uſually called the common d or, becauſe where there are two or more competing cr ors, he is debtor to all of them. The perſon in whoſe h the diligence is uſed is ſtiled the arreſtee.

§ 4. AS OFFICERS OF THE JUSTICES—ARRESTMENT.

ARRESTMENT may be laid on by the authority, either of the ſupreme court, or of an inferior judge. In the firſt caſe, it proceeds either upon ſpecial letters of arreſtment, or on a warrant contained in letters of horning; and it muſt be executed by a meſſenger. The warrants granted by inferior judges are called precepts of arreſtment, and they are executed by the officer proper to the court. Where the debtor to the common debtor is a pupil, arreſtment is properly uſed in the hands of the tutor, as the pupil's adminiſtrator: this doctrine may perhaps extend to other general adminiſtrators, as commiſſioners, &c.; but arreſtment uſed in the hands of the factor or ſteward of the debtor to the *common debtor*, cannot bar ſuch factor or ſteward from accounting to his own conſtituent [a]; as he is truly debtor to his conſtituent only, and not to the *common debtor*. Where the debtor to the common debtor is a corporation, arreſtment muſt be uſed in the hands of the directors or treaſurer, who repreſent the whole body [b]. An arreſtment being intended as a reſtraint upon *third* parties only, cannot be uſed in the hands of the debtor himſelf; nor probably in thoſe of his ſervant, (ſent, for example, with money to the bank), who is not properly debtor to his maſter, but a *hand* merely for carrying the caſh. But it may be competently uſed in the hands of a factor, or ſteward, having funds in his poſſeſſion belonging to the common debtor, for which he is accountable, or debtor; but the conſtituent muſt be called in the forthcoming [c].

The warrant of arreſtment.

In whoſe hands it may be uſed.

ALL debts, in which one is perſonally bound, though they ſhould be heritably ſecured, are grounds upon which

Upon what debts it may proceed.

[a] Kerſe, MS. fol. p. 234. Moriſon's Deciſions, v. Arreſtment. No. 61.

[b] 10th January 1739, Creditors of Menzies.

[c] Erſk. b. iv, tit. 6, § 4. Bank. b. iii, tit. 1, § 2. 18th Jan. 1709, Donald. (Forbes) Moriſon's Deciſions, v. Arreſtment, No. 65.

§ 4. AS OFFICERS OF THE JUSTICES—ARREST-MENT.

the creditor may arreſt the moveable eſtate belonging t debtor; for every creditor, whatever the nature of his may be, ought to have the whole of his debtor's eſtate ject to his diligence. Arreſtment may proceed on a the term of payment whereof is not yet come, in caſ

Arreſtment upon a dependence.

debtor be *vergens ad inopiam* [a]. If a debt be not yet c tuted by decree or regiſtration, the creditor may raiſ execute a ſummons againſt his debtor for payment, on w pending the action, arreſtment may be uſed, in the manner as inhibition. This is called arreſtment up dependence [b]. If one's ground of credit be for the formance of a fact, or if his depending proceſs be m declaratory, without a concluſion of payment or deli ſuch claims are not admitted to be ſufficient grounds fo reſtment.

What debts are arreſtable.

MOVEABLE debts are the proper ſubject of arreſtm under which are comprehended conditional debts, and depending claims. For, leſſening the expence of dilig to creditors, all bonds which have not been made pro heritable by ſeiſin, are declared arreſtable, by 1644, c. revived by 1661, c. 51: but this act is limited to cont and obligations; and does not extend to adjudications, ſets, or other perſonal rights of lands, which are not perly debts [c]. Certain moveable debts are not arreſt 1, debts due by bill, which paſs from hand to hand, as

[a] See 16th July 1678, lord Pitmedden.

[b] By 33 Geo. III, c. 74, § 3, "it is "provided, that in time coming, letters or precepts of arreſtment, bearing to be upon a depending action, "may be granted ſummarily upon "the libelled ſummons; and it ſhall "be no objection to the *pari paſſu* "preference hereby eſtabliſhed, that "the ſummons upon which an "reſtment proceeds was not ex "ed, or that the debt upon whi "is founded was not liquidated "date of the arreſtment; prov "always that theſe, and all othe "ceſſary ſteps, are afterwards "without any undue delay."

[c] 22d Feb. 1666, Lockhart. (S

of money. 2, Future debts; for though inhibition extends to *adquirenda* as well as *adquisita*, yet arrestment is limited by its warrant to the debt due at the time of serving it against the arrestee. Hence an arrestment of rents or interests carries only those that have already either fallen due, or at least become current: as for such as had neither fallen due, nor become current at the date of the first arrestment, a new arrestment must be used, which may be done on the first warrant. Current rent is that which has begun to run on the last term, but cannot be demanded till the next. Claims depending on the issue of a suit, are not considered as future debts; for the sentence, when pronounced, has a retrospect to the period at which the claim was first founded [a]. The like doctrine holds in conditional debts. 3. Alimentary debts, or funds, are in general said not to be arrestable, as being granted on personal considerations; and so not communicable to creditors. But this admits of limitations and distinctions, and must depend a good deal on circumstances. Thus the arrears of an officer's pay were found arrestable [b]. But the half pay of a lieutenant of the navy was thought to be unattachable [c]. Minister's stipend is found arrestable [d].

§ 4. AS OFFICERS OF THE JUSTICES—ARRESTMENT.

Neither bills nor future debts.

Alimentary funds.

In other cases, a minister has been allowed to retain a certain part of his stipend for necessary subsistence, without being obliged to surrender the whole to his creditors [e].

In obligations which carry a yearly right to the creditor, if the obligation itself be arrestable, *e. g.* a moveable bond, or an heritable one not clothed with seisin, the princi-

[a] 19th Dec. 1744, Wardrop. (Falconer.)

[b] Bruce, 26th Jan. 1715.

[c] Fac. Coll. 5th March 1768.—Grierson.

[d] Clerk Home. 12th Feb. 1736.

[e] Dictionary of decisions, vol. ii, Personable and Transmissible. 9th July 1668, Beg.

§ 4. AS OFFICERS OF THE JUSTICES—ARREST-MENT.

pal ſum is carried by the arreſtment, as well as the p tereſt; and, conſequently, all the future intereſts unti ment, as acceſſory to the right itſelf: but in rights of or in heritable bonds perfected by ſeiſin, no more can reſted than the rents or intereſts that had either falle or become current at laying on the arreſtment. I ſame manner, the arreſtment of a bond due to a wife, by a creditor of the huſband, carries only the paſt an rent intereſt; for the right itſelf does not fall under t *mariti* [a].

The yearly profits may be arreſted, where the right itſelf cannot.

Effect of breach of arreſtment.

IF, in contempt of the arreſtment, the arreſtee make payment of the ſum, or deliver the goods arre the common debtor, he is not only liable criminal breach of arreſtment, but he muſt pay the debt ag the arreſter. In the caſe of arreſtment uſed at th ket-croſs of Edinburgh, and pier and ſhore of Leith, a perſon abroad upon the public ſervice, payment by t reſtee to his creditor, after the date of the arreſtment, him, by the old law, liable in ſecond payment to t reſter; becauſe the arreſter had done all in his po notify his diligence [b].

BUT by the late bankrupt act [c], it is enacted, that "
" reſtment executed at the market croſs of Edinburgh
" pier and ſhore of Leith, to attach the effects of the
" or, as in the hands of a perſon out of Scotland, ſh
" be held to have interpelled ſuch perſon from pay
" the original creditor, unleſs proof be made that
" thoſe having authority to act for him, were pre
" in the knowledge of ſuch arreſtment having b
" uſed."

[a] 19th January 1739, Creditors of Clunes. Dict. vol. i, p. 155.

[b] Fountainhall. 22d Jul Blackwood.

[c] 33 Geo. III, c. 79, § 4.

§ 4. AS OFFICERS OF THE JUSTICES—ARRESTMENT.

ARRESTMENT is not merely prohibitory, as inhibitions are; but is a ſtep of diligence which founds the uſer in a ſubſequent action, whereby the property of the ſubject arreſted may be adjudged to him: it therefore does not, by our later practice, fall by the death of the arreſtee, but continues to ſubſiſt, as a foundation for an action of furthcoming againſt his heir, while the ſubject arreſted remains *in medio* [a]. Far leſs is arreſtment loſt, either by the death of the arreſter, or of the common debtor.

Arreſtment does not fall by the arreſtee's death.

WHERE arreſtment proceeds on a depending action, it may be looſed by the common debtor's giving ſecurity to the arreſter for his debt, in the event it ſhall be found due. By the ancient practice, the receiving of this caution was committed entirely to the meſſenger, whoſe certificate that caution was given, effectually looſed the arreſtment: but all bonds of caution in looſings, are now to be received by the clerk to the bills, and recorded in the books of ſeſſion, 1617, c. 17. Arreſtment founded on decrees, or on regiſtered obligations, which in the judgment of law are decrees, cannot be looſed, but upon payment or conſignation; except, 1, where the term of payment of the debt is not yet come, or the condition has not yet exiſted. 2, Where the arreſtment has proceeded on a regiſtered contract, in which the debts or mutual obligations are not liquid [b]. 3, Where the decree is ſuſpended, or turned into a libel; for, till the ſuſpenſion be diſcuſſed, or the pending action concluded, it cannot be known whether any debt be truly due. A looſing takes off the *nexus*, which had been laid on the ſubject arreſted; ſo that the arreſtee may thereafter pay ſafely to his creditor, and the cautioner is ſubſtituted in place of the arreſtment for the arreſter's ſecurity: yet the arreſter may,

Looſing of arreſtment.

Looſing not admitted but on payment or conſignation, in regiſtered obligations.

Exceptions.

Effect of looſing.

[a] (Clerk Home, No. 110.) 21ſt Dec. 1738, E. Aberdeen.
[b] 31ſt July 1705, Macfarlan. (Forbes.)

§ 4. AS OFFICERS OF THE JUSTICES—ARRESTMENT.

while the ſubject continues with the arreſtee, purſu a furthcoming, notwithſtanding the looſing [a].

Forthcoming on arreſtment.

ARRESTMENT is only an inchoated or begun d to perfect it there muſt be an action brought by th againſt the arreſtee, to make the debt or ſubject furthcoming. In this action the common debtor called for his intereſt, that he may have an oppor excepting to the lawfulneſs or extent of the debt the diligence proceeded. Though an arreſtment c executed without the territory of the judge who gr precept, yet one inferior judge is competent to coming, upon an arreſtment laid on by the warra other [b]. Before a furthcoming can be purſued, due by the common debtor to the arreſter muſt be ed; for the arreſter can be no farther intitled to th arreſted, than to the extent of the debt due to hi common debtor. If the purſuer cannot prove the de the arreſtee *ſcripto*, recourſe muſt be had to his oath the ſubject arreſted is a ſum of money, it is, by t of furthcoming, directed to be paid to the purſue ſatisfying his debt; where goods are arreſted, the dains them to be expoſed to ſale, and the price to b ed to the purſuer [c]: ſo that, in either caſe, decrees coming are judicial aſſignations to the arreſter of th arreſted.

Before whom can it be purſued.

The arreſter's debt muſt be firſt liquidated.

Decree of furthcoming is really an aſſignation.

Arreſtments are preferred by their dates,

IN all competitions regard is had to the date the grounds of debt, but of the diligences proceed them. In the competition of arreſtments, the pre governed by their dates, according to the priority

[a] 7th Feb. 1665, Graham.
[b] Stair, iii, 1. 24. 23d June 1710, Dalrymple.
[c] 12th Nov. 1680, Stevenſons.

§ 4. AS OFFICERS OF THE JUSTICES—ARRESTMENT.

hours, where it appears with any certainty which is the firſt. But as arreſtment is but a begun diligence, therefore, if a prior arreſter ſhall neglect to inſiſt in an action of furthcoming for ſuch a time as may be reaſonably conſtrued into a deſertion of his begun diligence, he loſes that preference which it was in his power to have obtained for himſelf, and the laſt arreſter is preferred: but as dereliction of diligence is not eaſily preſumed, the diſtance of above two years between the firſt arreſtment and the decree of furthcoming, was found not to make ſuch a *mora* as to intitle the poſterior arreſter to a preference [a]. This rule of preference, according to the dates of the ſeveral arreſtments, holds, by our preſent practice, whether they have proceeded on a decree, or on a dependence; on debts not yet payable, or on debts already payable; provided the pendency ſhall have been cloſed, or the debt have become payble before the iſſue of the competition [b].

Provided the arreſter inſiſts in his furthcoming.

Rules of preference between arreſters and aſſignees.

In the competition of arreſtments with aſſignations, an aſſignation by the common debtor, intimated before arreſtment, is preferable to the arreſtment; for, by the intimated aſſignation the debtor is fully diveſted, after which the ſubject cannot be arreſted as his. If the aſſignation is granted before arreſtment, but not intimated till after it, the arreſter is preferred; for arreſtment renders the ſubject litigious, and ſo excludes every voluntary right of the debtor, either granted after the diligence, or not completed till after it. From theſe rules, a third neceſſarily follows, that if the intimation and arreſtment are of equal dates, they are preferable *pari paſſu*; unleſs the arreſter has deſerted his diligence, by neglecting for a reaſonable time to obtain a forthcoming.

[a] Jan. 1724, Nairn.

[b] 14th June 1710, Brody. (Forbes.) By ſtatute 23 Geo. III, c. 18; and 33 Geo. III, c. 74, § 3 and 31, a *pari paſſu* preference of arreſtments is eſtabliſhed in the caſe of bankruptcy.

§ 4. AS OFFICERS OF THE JUSTICES—POINDING.

POINDING is that diligence by which the property moveable ſubjects is carried directly to the creditors. It either called *real poinding*, which proceeds on *real debts*, *debita fundi*; or *perſonal poinding*; which alone falls unde our notice.

PERSONAL poinding may proceed on letters of horning containing a clauſe for poinding, (in which caſe it is execu ed by meſſengers), or on the decrees of inferior judges; t the extracts of which precepts of poinding are always ſub joined. It is executed in that caſe by the proper officers o the reſpective courts.

FORMERLY it was uſual to poind the goods of debto without any previous intimation of the regiſtration of the bond [a], &c. This rigorous practice was aboliſhed by ſt 1469, c. 35, which, under the *pains of ſpulzie*, prohibits a *perſonal poinding* to be carried into execution, till the debt be firſt charged to *pay* or *perform*, and till the days of t charge be expired, under the pains of ſpulzie. The co ſtable muſt therefore give the debtor a charge.

As it is not preſumed that landlords will incline to inju the credit of their tenants without neceſſity, the act reſer entire their right to proceed as formerly. Barons, therefo may ſtill poind their tenants for the arrears of rent fixed decree, not only without an antecedent charge, but even *ſtanter*, after pronouncing decree [b].

Mode of proceeding.

IF, after the elapſe of the time mentioned in the char payment be not made, it ſhall be competent to a conſtab with two witneſſes and two appraiſers, to go to the defe er's poſſeſſion; and having ingathered his goods, and exp

[a] Kaimes' Elucidation, p. 407.
[b] Erſkine, book iii, tit. 6, § 21.

of them to public view, to read the decree of the juſtices and the execution of charge; and thereafter the conſtable ſhall appoint the ſaid two appraiſers, who ſhould be birley-men, and muſt ſwear, "to execute the buſineſs of appriſ-"ers now committed to them, according to the beſt of their "ſkil and ability." After the appraiſers have compriſed the goods preſented to them by the conſtable, which ſhould be to the extent of the debt and one-twentieth part more, the conſtable then cries three ſeveral oyeſſes; offers back the goods three ſeveral times to the debtor, or to any perſon in his name, who will pay the goods appraiſed; with certification that if ſuch prices be not paid, he will deliver them to the creditor in ſatisfaction of the debt. § 4. AS OFFICERS OF THE JUSTICES—POINDING. Comprising

If payment be made.

If the debtor pays the money to the conſtable, or his lawful attorney, the goods muſt be left with the debtor, and the conſignation or payment mentioned in the execution [a].

If payment be not made.

But if payment is not made, the conſtable or meſſenger ſhall leave in the hands of the debtor a ſchedule of the pounded goods, and of the appraiſed value, (one appraiſement being now in every caſe ſufficient), and ſhall forthwith report his execution of pounding to the ſheriff, or other judge ordinary, who ſhall give directions for ſelling the goods by public roup, after ſuch publication, and at ſuch time and place as circumſtances may require. Any perſon who intromits with, or carries off, the goods in the meanwhile, being liable in double the appraiſed value; and the neat ſum riſing from the ſale, after deduction of all charges, or the goods, in caſe no offerer appear, ſhall be delivered over to the pounding creditor; a note or minute of the tranſaction being kept by the clerk to be made patent to all concerned, for a fee of one ſhilling [b].

[a] Erſk. b. iii, tit. 6. § 24.

[b] 33 Geo. III, c. 74, § 5 and 6.

§ 4. AS OFFICERS OF THE JUSTICES—POINDING.

THE poinding (and ſo alſo the Engliſh *diſtreſs*) muſt pr ceed betwixt ſun riſing and ſun ſetting. If, therefore, t conſtable or meſſenger ſhould attempt to poind in the nigh thoſe who reſiſt him are not guilty of the crime of defore ment. Thus in the caſe of Porteous of Walkinſhaw, 8 July 1701, the defence, "that the meſſenger and his aſſiſ "ants began to gather the poind before the ſun-riſing, w "found relevant to elide the libel [a]." This rigour, how ever, is ſo far abated, that a poind begun before ſun ſe ting is ſuſtained, if it is finiſhed before the going off c day light [b].

Betwixt what time muſt it proceed.

If begun before ſun ſet.

THE creditor can poind only the goods belonging to hi debtor. The old law, which authoriſed the poinding of th goods of tenants for the debts of their landlords, was i part corrected by 1469, c. 37, which confined ſuch poind ings to the amount of the rent due by the tenant to th landlord; and now of a long time no poinding has bee uſed againſt a tenant, even to the leaſt extent for a perſon debt due by his landlord [c].

Exception of certain moveables which cannot be poinded.

EVEN the *moveables* of the debtor, in certain circumſtance cannot be poinded. The Roman law [d], by which ploug horſes, oxen, and other inſtruments of tillage, could not b attached by a creditor, has been, under ſome reſtriction adopted by the act [e] 1503, c. 98, which prohibits th poinding of horſes, oxen, or other goods, belonging to th plough at the time of labouring the ground, even where th

[a] Hume, Crim. law, vol. ii, c. 13, § 4.

[b] Feb. 11, 1695, Douglas. Erſk. b. iii, tit. 6, § 25.

[c] Erſk. b. iii, tit. 6, § 22.

By the Engliſh law the general rule (under ſome exceptions) is, that the landlord may diſtrain for re whatever goods and chattels he fin upon the premiſes, whether they b long to the tenant or to a ſtrang (Black. v. iii, p. 8.)

[d] L. 7, 8, C. *quæ res pign obli.*

[e] Par. 6, James IV.

debtor has other goods that may be poinded, or other lands that may be appraiſed.

§ 4. AS OFFICERS OF THE JUSTICES—POINDING.

But the latter part of the act has long been in diſuſe; and now, though the debtor hath lands, his plough goods may be poinded, if he hath no other moveables, or whereby thoſe left the cultivation of the ground may be carried on, though with ſome leſs diſadvantage than before [a].

In what caſe can plough goods be poinded.

By the time of labouring, mentioned in the act, is meant the time in which the tenant, whoſe goods are to be poinded, is tilling the ground. A debtor's plough goods, horſes, cannot be poinded; if his own ploughing be not over, though that of the neighbouring tenants be finiſhed. Accordingly, in a criminal trial for deforcement, the court of juſticiary ſuſtained this defence,—"that the ſaid oxen were "ſtricked and yoked, and actually working ſeveral days be"fore the poinding; and that ſome others in that county "were alſo labouring in the ſame manner their ſtubble "ground at the time libelled, and likewiſe there were other "poindable goods upon the ground at that time [b].

To what period extends the exception as to the time of ploughing.

It is only the ploughing for immediate ſowing that the exemption relates to. A debtor's plough utenſils may therefore be poinded, although he ſhould be continuing to plough for ſummer fallow [c].

Does the exception extend to ploughing for ſummer fallow.

The poinding of plough goods, in contravention of the above act, infer a ſpulzie; but if the meſſenger has been to

Penalty for poinding plough goods.

[a] Dec. 7, 1692, Turner. (Fountainhall) Erſk. b. iii, tit. 6, § 22.

The ſame obtains in the Engliſh *diſtreſs* for rent, arrear, amerciaments, and the like; but does not extend to caſes where *a diſtreſs* is given in the nature of an execution by any particular ſtatute, as for poor rates, and the like. (Burn. tit. Diſtreſs, § 2.)

[b] Hume, vol. iii, p. 179.

[c] 1712, June 20, Arnott.

§ 4. AS OFFICERS OF THE JUSTICES—POINDING.

blame no otherwiſe than by not making a thorough ſear for moveables, the debtor is intitled to reſtitution only [a]. the officer, in his ſearch, find ſome moveables, but enough for clearing off the debt, he may lawfully proce in execution of the poinding. This exemption from poin ing was by an old deciſion [b] extended by analogy to t bucket and wand of a ſalt pan, which cannot be poinded, the debtor has ſufficiency of poindable goods [c].

Other moveables not poindable.

Goods previouſly arreſted?

THOSE goods of the debtors which have been previouſ arreſted by another creditor, may nevertheleſs be poinded for arreſtment is but an imperfect diligence, leaving the pro perty ſtill in the debtor. Growing corns being *moveable* and their value as capable of being fixed before as afte their ſeparation from the ground, may of courſe be poind ed [d].

Can growing corns?

Symbolical poinding of corns.

CORN is ſometimes poinded ſymbollically, by rips or par cels drawn from the ſtacks. This ſort of poinding is effec tual to creditors when proceeded in regularly, ſo that th uſer of it is preferable to another creditor who ſhall com

[a] 1703, July 20, Lawſon. (Fount.)

[b] Balfour, p. 400.

[c] Erſk. b. iii, t. 6, § 22.

By the antient common law of England, a man's tools and utenſils of his trade; the axe of the carpenter; the books of a ſcholar, and the like, were privileged; becauſe the taking them away would diſable the owner from ſerving the public in his ſtation. (Blackſtone, b. iii, p. 8.) But utenſils and implements of trade may be diſtreined when not in actual uſe. (Chriſtian's note thereon.) By the Engliſh law, nothing in the perſonal uſe or occupation of a man can be diſtreined, in order to avoid giving occaſion to breaches of th peace, nor valuable things in the wa of trade, as a horſe ſtanding in ſmith's ſhop to be ſhoed, &c. Ibid.

[d] Fount. June 15, 1709, Balla tyne.

By the Engliſh law nothing fixe to the freehold may be diſtreine as caldrons, windows, doors, a chimney-pieces; for this reaſon al growing corns could not be diſtrei ed, till the ſtatute 11 Geo. II, c. 1 empowered landlords to diſtrein cor graſs, or other products of the ear and to cut and gather them wh ripe. (Black. ibid.)

plete a poinding before him by getting the grain legally appraiſed, and its quantity aſcertained [a]; becauſe it is the ſentence of the meſſenger adjudging the ſubject poinded to the creditor, which transfers the property: but if the creditor poinding by rips, take poſſeſſion of the corn before their price be legally fixed by a ſworn appraiſer, and the quantities ſettled either by ſworn threſhers, caſters, or meaſurers, or at leaſt by the tenants from whom the creditors received them [b], he will be liable in a ſpulzie. But care muſt be taken that the poinding be without prejudice of the landlord, who objects his hypothec, otherwiſe the meſſenger may be reſiſted with impunity [c].

Spuilzie for poſſeſſing, if before the price is fixed.

If a ſufficiency is not left for the landlord's hypothec.

THOUGH in executing a caption a meſſenger is not bound, as lord Bankton obſerves, to ſhew his blazon, as this were a warning to the debtor to make his eſcape, the caſe is otherwiſe in poindings; in going to execute which, or *real diligence*, the meſſenger ſhould have his viſible badge upon him, otherwiſe he may be reſiſted with impunity [d].

Should the badge be ſhewn in executing a poinding.

IN caſe the conſtable is prevented from completing the poinding, by ſhut doors, he is to return an execution to that effect [e].

IF he ſhall break open doors to poind, without letters of open doors, he may be reſiſted, without the guilt of deforcement [f].

If he attempts to break open doors to poind.

[a] Fount. Dec. 22, 1698. Cathcart, 1727, June, M'Whirter.

[b] March 11, 1707, Erſk.

[c] Hume, Crim. law, vol. ii, p. 199. Gardenſtone, MS. v. Deforcement.

[d] By the Engliſh law, the landlord has no means to get at the goods, if the tenant locks his door. But if the outer door be open, one may break an inner door to take a diſtreſs. (Buller's Niſi prius, p. 81.)

There is one exception. If the tenant clandeſtinely conveys away his goods, and locks them up, the landlord, calling a conſtable, and making oath to the houſe, may break it up in the day time. (Burn, tit. Diſtreſs.)

[f] Hume. Ibid.

... be deforced, he returns an execution of deforce ... If the debtor offers payment before the pointing be ... completed, time will be allowed for that purpoſe.

As the property of moveables is preſumed from the poſ- ...ſſion of them, the conſtable or meſſenger ought to pro- ...ceed on executing his diligence, though the debtor ſhould declare, even on oath, that the goods about to be pointed belong to another. But if a third party ſhall, before the pointing is completed, offer to make oath that the goods are his, the conſtable, who is veſted with judicative authority in this matter, is authoriſed to take his oath, and even put ſpecial interrogatories to him, in order to diſcover in whom the property is truly veſted; and if, by the claimant's anſwers, it appears to him that the claim is colluſive, he may proceed in the pointing[a]; otherwiſe he ſhall return an execution ſtating the interruption.

If a third party interferes?

IF the party has omitted, or does not incline, to make oath to the conſtable, he ſtill has an opportunity of making oath to the ſheriff when the appraiſement is reported; and if diſſatisfied with the ſheriff's judgment, he may carry the queſtion by advocation before the court of ſeſſion. But if, without appearing or objecting at that period, he ſuffers the ſheriff to iſſue forth his warrant for the roup, it is then too late to offer his oath to the conſtable, whoſe powers then conſiſt merely in carrying the roup into execution. The opinion that oath may be made any time before the ſale, is erroneous, and tends to produce much confuſion, and to diminiſh the beneficial alteration of the bankrupt act, which gives the party ſo much more time to retain his property[b].

[a] Stair, b. iv, tit. 30, § 6; tit. 47, § 26. Erſk. b. iii, tit. 6, § 26.

[b] Obſervation from the bench; Anderſon againſt Roy, 1ſt February 1804.

§ 4. AS OFFICERS OF THE JUSTICES—POINDING.

If a ſiſt or ſuſpenſion is intimated to the meſſenger or conſtable, he muſt deſiſt; the poinding will not be effectual [a]; he may even be reſiſted with impunity: the court of juſticiary ſuſtained the defence, that a ſiſt was intimated to the meſſenger the day before the deforcement [b]

If a written conveyance.

And by the general opinion of our writers, ſupported by ſeveral deciſions, if the claimant produce a written conveyance, and make oath to the verity, the conſtable or meſſenger has no authority to judge whether the claim be colluſive or not. He muſt deſiſt from the poinding, and expreſs his reaſon in the execution [c]; if he attempt to proceed in the face of the conveyance, it is no deforcement to reſiſt him [d].

DISTRESS.

Many Britiſh ſtatutes in force in this country order execution by *diſtreſs and ſale*, for recovering ſums and penalties awarded by the decrees of the juſtices of peace; for the particulars of which recourſe muſt be had to the ſtatutes themſelves; or to thoſe parts of the work where they fall to be noticed.

Although the title of *Diſtreſs* is explained at great length by Burn, it is not neceſſary to go into any minute detail, having already, as we proceeded, marked its agreement or diſagreement with the *Scottiſh poinding*; and indeed this ſtatutable *diſtreſs*, with which alone we have to do, differs very eſſentially from the *Engliſh* diſtreſs at common law [e]; we ſhall therefore only notice that diſtreſs which takes place by warrant of juſtices of the peace.

By the 27 Geo. II, c. 20, it is enacted as follows: "In

[a] Dec. 7, 1692, Turner. Fount.
[b] Major Burnet, 1697, Auguſt 4. Hume, Crim. law, vol. ii, c. xiii. § 5.
[c] Fount. July 22, 1687 Bread. and Brock. b. iii. t. 6. § 26.
[d] Purves againſt Craw, 1697, 20th March. Hume, Criminal law, ibid.
[e] Blackſtone, b. iii, p. 6.

§ 4. AS OFFICERS OF THE JUSTICES—DISTRESS.

" all caſes where any juſtice of the peace is or ſhall be r
" quired or impowered by any act of parliament to iſſue
" warrant of diſtreſs for the levying of any penalty inflic
" ed, or any ſum of money directed to be paid by ſuch ac
" it ſhall be lawful for the juſtice granting ſuch warran
Making diſtreſs, and ſelling the ſame. " therein to order and direct the goods and chattels ſo
" be diſtrained, to be ſold and diſpoſed of within a certai
" time, to be limited in ſuch warrant, ſo as ſuch time b
" not leſs than four days, nor more than eight days, unle
" the penalty, or ſum of money, for which ſuch diſtre
" ſhall be made, together with the reaſonable charges c
" taking and keeping ſuch diſtreſs, be ſooner paid.

Charges of taking, keeping, and ſelling. " AND the officer making ſuch diſtreſs, ſhall and may d
" duct the reaſonable charges of taking, keeping, and ſe
" ing, ſuch diſtreſs, out of the money ariſing by ſuch ſal
" and the overplus (if any) after ſuch charges, and alſo t
" ſaid penalty or ſum of money, ſhall be ſatisfied and pa
" ſhall be returned, on demand, to the owner of the goo
" ſo diſtrained; and the officer executing ſuch warrant,
" required, ſhall ſhew the ſame to the perſon whoſe good
" are diſtrained, and ſhall ſuffer a copy thereof to be taken.

Where diſtreſs cannot be found in the juriſdiction of the juſtices granting warrants, it may be levied in any other place. " AND whereas warrants of diſtreſs are ſometimes ine
" fectual, by reaſon of the goods of the offenders being ou
" of the juriſdiction of the juſtice granting the ſame, it i
" enacted, that in all caſes where any penalty, forfeitur
" fine, or other money, is directed by warrant of any juſti
" to be levied by diſtreſs and ſale of the goods of any pe
" ſon, if ſufficient diſtreſs cannot be found within the l
" mits of the juriſdiction of ſuch juſtice, on oath thereo
" made by one witneſs, before one juſtice of any oth
" county or place, (which oath ſhall be by him certified b
" indorſement on ſuch warrant), ſuch penalty, forfeitur
" fine, or other money, or ſo much thereof as may n
" have been before levied or paid, may, by virtue of ſuc

"warrant and indorſement, be levied by the perſon to "whom ſuch warrant was originally directed, by diſtreſs "and ſale of the goods of ſuch perſon in ſuch other coun- "ty or place; to be applied in like manner as if ſufficient "diſtreſs had been found within the juriſdiction of the juſ- "tice who originally granted ſuch warrant; and if no ſuch "diſtreſs can be found, ſuch offender may be proceeded "againſt according to law [a]." § 5. AS OFFICERS OF THE JUSTICES—DISTRESS.

"PROVIDED, that no juſtice who ſhall indorſe any ſuch "warrant as aforeſaid, ſhall be anſwerable for any irregula- "rity which may have been committed in or about the "granting thereof [b]."

V. THE moſt and important part of the duty of conſtables, is the execution of criminal warrants. § 6. CRIMINAL WARRANTS

IF a warrant be directed generally to all conſtables, no one can execute it out of his own precinct; for in ſuch caſe it ſhall be taken to each of them reſpectively within their ſeveral diſtricts, and not to one of them to execute it within the diſtrict of another.

ACCORDINGLY, in an action of treſpaſs for entering the plaintiff's houſe, where the defendant had acted under a warrant from a juſtice of the peace to ſearch for nets, directed to the conſtable of Shipborne, to Samuel Carter, and to all other officers of peace in the county of Kent, lord Mansfield delivered the opinion of the court as follows:— "This is a moſt unjuſt action: the plaintiff having receiv- "ed no ſort of damage, and the defendant having acted "*bona fide*. I therefore wiſhed much to get rid of it: but "the law is correctly brought to my recollection, and I am

[a] 33 Geo. III, c. 55, § 3.
[b] Ibid.

§ 6. CRIMINAL WARRANTS

" ſorry to find it with the plaintiff. No conſtable can a
" out of his own diſtrict. It is certainly to be taken *rede*
" *do ſingula ſingulis.* The defendant is neither conſtable
" Shipborne, nor Samuel Carter; and the general directio
" is to be taken to each within his own diſtrict; therefore
" as the warrant was not directed to the claimant, he can
" not juſtify under it. The plaintiff muſt have a verdict fo
" one ſhilling [a]."

Reaſon of the rule.

THE reaſon of the rule ſeems to be, that warrants may b executed by perſons whoſe character as officers of the la is known in the place; otherwiſe force might often be re pelled by force, and infinite miſchiefs might ariſe. Even the warrant be directed to a particular conſtable by nam he is not *compellable* to execute it out of his own *diſtrict* though he may execute it any where within the juriſdictio of the juſtice [b]. He may execute the warant alſo beyon the juriſdiction of the juſtice, provided it be indorſed by a juſtice or magiſtrate for the county or place where the deli quent (whether before or after the iſſuing of it) has gone reſide [c].

Is a conſtable compellable to execute it out of his diſtrict?

When may a warrant be executed beyond the juriſdiction?

Warrant to two or more jointly.

ALTHOUGH the warrant be directed to two or more joint ly, yet any of them alone may execute it [d].

Taking the aſſiſtance of others.

THOUGH others may lawfully aſſiſt, yet the perſon t whom the warrant is directed muſt *perſonally* execute it, u leſs it be directed to the ſheriff, who may command h bailiff, under ſheriff, or other known and ſworn officer, ſerve it, and even without any writing or precept. But if I will command another man that is no ſuch officer, to ſer

[a] Caſ. by H. Black. 1 V. 15 N.
[b] Lord Ray M. 546. 1 H. H. 581. 2 H. H. 110. 2 Hawk. 86. Burn, v. Arreſt.
[c] 24 Geo. II, c. 55. Burn, v. Warrant.
[d] Dalt. c. 169.

it, he muſt give him a *written* precept, otherwiſe falſe imprisonment will be committed [a]. § 6. CRIMINAL WARRANTS

HAWKINS, however, adds, that, "inaſmuch as the office of a conſtable is wholly miniſterial, and no way judicial, it ſeems that he may appoint a deputy to execute a warrant directed to him, when by reaſon of ſickneſs, abſence, or otherwiſe, he cannot do it himſelf; yet it doth not ſeem to be ſettled that a conſtable can make a deputy without ſome ſpecial cauſe [b]." Dr. Burn, upon this ſubject, ſtates the following caſes.—Maidhurſt and Waite, M. 2, G. 3. The high conſtable appointed a deputy to billet ſoldiers under the mutiny act: the appointment was by parole only, and the deputy was not ſworn. It was ruled by lord Mansfield and the court, that the high conſtable had power by the act to billet ſoldiers; and he may appoint a deputy to this particular miniſterial act. This is a miniſterial (not a judicial) act: and a conſtable may appoint a deputy to do miniſterial acts [c]. May he appoint a deputy?

AND in the caſe, King v. Clark, it ſeemed to be admitted as a ſettled point that a conſtable may appoint a deputy [d].

THE ſuperior muſt be anſwerable for his deputy upon any miſcarriage, unleſs the deputy be duly allowed and ſworn; for then he is conſtable. Reſponſible for his deputy?

AND by 1 W. c. 18, s. 7, if any perſon diſſenting from the church of England ſhall be ſworn conſtable, and ſhall ſcruple to take upon him the office, in regard of the oaths, or any other matter required to be done in reſpect of ſuch office, he may execute it by a ſufficient deputy, by him to be provided, to be allowed by ſuch perſons, and in ſuch man- With reſpect to diſſenters.

[a] Lamb. 89.
[b] 2 Hawk. 62.
[c] Burr, Manſ. 1259. Burn (Conſtable.)
[d] Durnf. and Eaſt. 1 v. 682.

§ 6. CRIMINAL WARRANTS

ner as ſuch officer in ſuch office ſhould have been allowed; and by 31 Geo. III, c. 32, the like privilege is extended to Roman catholics, on their taking and ſubſcribing the oath and declaration ſpecified [a].

Manner of arreſting.

THE officer to whom a warrant is directed and delivered, ought with all ſpeed and ſecrecy to find out the party, and then to execute the warrant.

Ought he to notify his errand and office.

How?

IT ſeems to be proper, that at the time of arreſting the conſtable notify his office and errand. The delinquent thus warned of his duty, and of the conſequences of reſiſtance [b]. The natural warning is to exhibit his baton, and (if a meſſenger) his blazon [c], and produce his warrant; which precautions, as far as poſſible, ought to be obſerved, but cannot be ſaid to be indiſpenſible. An officer gives ſufficient notice what he is, when he ſays to the party, "I arreſt you in the king's name;" in which caſe the party muſt at his peril obey him, though he know him not to be an officer; and if he have no lawful warrant, the party aggrieved may have his action of falſe impriſonment [d]. We have already ſeen, that without any warrant a conſtable may arreſt by virtue of his office; in like manner in caſes of felony, not only a conſtable, but even private perſons may arreſt the felon, without any warrant at all.

Exhibition of his blazon and baton?

A known officer.

A DISTINCTION has been made between an officer known to be ſuch, and when he is acting among ſtrangers. If he acts out of his precinct, or is not ſworn, and commonly known, though he is not obliged *to part* with his warrant to any one, even an impartial ſpectator for inſpection

[a] § 7 Burn, (*v.* Conſtable).

[b] Hume, vol. iv, p. 172.

[c] From the braſs or ſilver blazon fixed to their breaſt, meſſengers are called *officers at arms*.

[d] Dalton, c. 169.

§ 6. CRIMINAL WARRANTS

or peruſal [a], yet he muſt ſhew it, if demanded [b]; otherwiſe the party may make reſiſtance, and need not obey it [c]. Thus in the trial of John and George Sinclair, for reſiſting a warrant to apprehend for theft, judgment was delivered in theſe terms: "But find the defence alleged for the defenders, "that James Sutherland was not known to be a ſheriff-offi- "cer; and that no warrant was produced by him from the "ſheriff, when required, for ſeizing John Orr, relevant to "elide that part of the libel [d]." But a perſon ſworn, and commonly known, and acting within his own precinct, need not ſhew his warrant; but he ought to acquaint the party with the ſubſtance of it [e]. The diſpoſition of our practice ſeems rather to be for exacting the ſame compliance, even from a known officer acting within his ordinary precinct, wherever he acts in virtue of a warrant, ſince it is poſſible he may not be poſſeſſed of it, or not have it upon him at the time [f].

Is he obliged to part with his warrant to any one for inſpection.

§ 7. TAKING THE POWER OF THE COUNTY.

THE act 1663, c. 6 [g], intitled, for ſuppreſſing theft, robberies, and depredations, enacts, "that whenever any op- "preſſions, hayſhips, reifs, ſomings, thefts, robberies, or "depredations, ſhall happen to be committed within any "part of this kingdom, by whatſoever perſon or perſons, "the owner of the goods ſhall immediately give intimation "to the ſheriff or his deputes, or any of the juſtices of the "peace, or conſtables within the paroch, out of which the "goods are taken, as can be moſt conveniently had; and "which ſheriffs, juſtices of peace, or conſtable, ſhall im- "mediately, upon intimation foreſaid, under the pain of "being liable in the reſtitution of the goods away taken, or "payment of the value thereof, command and require all

Duty of all to give intimation.

Duty of the magiſtrate.

[a] Hume, vol. iii, c. 2.
[b] 2 Hawk. p. 85, 86.
[c] Dalton, L. 169. Burn, Arreſt.
[d] Hume, vol. iii, c. 2, § 2, p. 125.
[e] Ibid. Hawk. p. 85.
[f] Hume, vol. iii, c. 2.
[g] Cha. II, parl. 1, ſeſſ. 2.

§ 7. TAKING THE POWER OF THE COUNTY.

" ſenſible perſons within the pariſh to concur and go along
" with him in purſuit of ſaid goods and away-takers there-
" of; and which perſons are obliged to obey under the
" pain foreſaid," &c. " And in caſe it ſhall happen the
" ſaids thieves or robbers to paſs through or reſt in any
" other paroch where the juſtices of peace, conſtables, he-
" retors, woodſetters, and fewers, within the ſame, are able
" to ſtop and oppoſe the carrying away of the ſaids goods,
" then, and in that caſe, the ſaids juſtices of peace, conſta-
" bles, heretors, woodſetters, and fewers, ſhall be themſelves
" tennants and ſervants, and ſuch as they can command
" make oppoſition, and ſeize upon the goods and drivers
" thereof; and ſhall be obliged, upon complaint made
Reſtoring the goods to the owners.
" the ſheriff or his deputes, or any of the ſaids juſtices
" peace, by the owner of the ſaids goods, or any having
" power from the owner for that effect, to reſtore the ſame
" goods within fifteen dayes after the requiring thereof
" and deliver, or ſecure, the drivers and way-takers there-
" that they may underly the law; and in caſe the commit-
" ters of the foreſaid crime be ſo numerous and powerful that
" they cannot be ſtopt and maſtered by the inhabitants of the
" ſaid paroch, then the ſaids whole ſenſible inhabitants ſhall
Riſing of the county.
" be oblidged, under the pain foreſaid, to riſe in arms, and
" follow and purſue them; and require all the ſenſible per-
" ſons, in any other paroch they ſhall happen to paſs
" through, to joyn with them (and which perſons ſhall be
" obliged to do the ſame, under the pain of being lyable for
" the goods, or value thereof, as ſaid is), in the proſecution
Puniſhment of thoſe who refuſe their aid.
" and recovery of the ſaids goods, that ſo the goods may be
" reſtored to the right owners, and the depredators puniſh-
" ed according to law. It is likewiſe ſtatute and ordained
" that if the purſuer of the goods ſhall not be able, after
" all his utmoſt endeavours, with concurrence aforeſaid, to
" recover the ſaids goods, and apprehend the way-takers
" thereof, then, and in that caſe, the reſpective heretors
" woodſetters, and fewers, within the paroch wherein the

"goods ſhall be found to have been diſpoſed of, or ſparpelled, ſhall be lyable for the value of the ſaids goods according to their ſeveral intereſt." §7. TAKING THE POWER OF THE COUNTY.

A PRIVATE perſon cannot raiſe power to arreſt or detain a felon [a]; but any juſtice, or the ſheriff, or other officer, may take of the county any number he ſhall think proper to purſue, arreſt, and impriſon, traitors, murderers, robbers, and other felons; or ſuch as break, or go about to break, and diſturb the king's peace: and no man can refuſe his aid and aſſiſtance under pain of fine and impriſonment [b]. But it is not juſtifiable to aſſemble the *poſſe comitatus*, or raiſe a power or aſſembly of people without good cauſe. In England, a juſtice, ſheriff, or other officer, intitled to take the *poſſe comitatus*, may command the aſſiſtance of all knights, gentlemen, yeomen, huſbandmen, labourers, tradeſmen, ſervants, apprentices, and of all other perſons above the age of fifteen years, and able to travel [c], becauſe by the ſtatute of Wincheſter, all above that age are bound to have harneſs [d]; but women, eccleſiaſtical perſons, or ſuch as are decrepit or diſeaſed, ſhall not be compellable to attend them [e]; and in ſuch caſe it is referred to the judgment of the juſtice, ſheriff, or officer, what number he will have to attend him; and how, and in what manner, they ſhall be armed, or otherwiſe furniſhed [f]. Similar to theſe are the proviſions of the Scottiſh act, above recited; though, ſays Mr. Hume, not obſerved with that punctuality that may be wiſhed [g].

Who may, and who may not?

Penalty for not giving aid.

Poſſe comitatus, when proper.

Who ought to join it?

Who are exempted?

By this ſtatute, the ſeverity both of king James the Sixth's act for the puniſhment of thieves and other ſuch offenders [h],

[a] 1 Hale. Hiſt. p. 601.
[b] Dalt. c. 171. Burn, Arreſt.
[c] Idem.
[d] Burn, Arreſt.
[e] Dalt. ibid.
[f] Idem. Burns, ibid.
[g] Hume, vol. iii, c. 2, § 2.
[h] 1594, c. 231.

§ 7. TAKING THE POWER OF THE COUNTY.

and of the clauſe in the general enactment reſpecting hom cide [a], making it lawful to kill depredators and fugiti criminals, ſeems to have been moderated and explained, i as far as the warrant of a lawful magiſtrate became neceſſ ry to juſtify the ſlaughter of ſuch offenders and their aſſ ciates; and ſo the law has been underſtood in practice [b].

§ 8. ARREST IN GENERAL.

VIII. AN arreſt in the night is good, both at the ſuit the king and ſubject, otherwiſe the party may eſcape [c]. C minal warrants may be executed on the Lord's day; b any civil warrant executed that day is void; and the pe ſon executing it is liable in damages, as if he had had warrant [d].

Arreſt in the night, is it lawful?

IF the conſtable merely require the party to go befo the juſtice, this is no arreſt, nor impriſonment [e]. For b words will not make an arreſt, without laying hold of perſon, or otherwiſe impriſoning him [f]; but if the offi comes into the room, and tells the party he arreſts him, a locks the door, this is an arreſt, for he is in cuſtody of t officer [g].

Not by words.

Locking the door, without laying hold upon one?

IT hath been held in England, that if a conſtable, after h has arreſted the party by force of a warrant, ſuffer him to g at large, upon his promiſe to come again, and find ſur ties, he cannot arreſt him again by force of the ſame wa rant. If the party, however, return, and put himſelf u der the cuſtody of the ſame conſtable, it ſeems that it m be probably argued that the conſtable may lawfully deta him, and bring him before the juſtice, in purſuance

Retaking after arreſt.

If he is let go on his promiſe to return.

If he voluntarily returns.

[a] Cha. II, parl. 1, 1661, c. 22.
[b] Gardenſtone, MS. v. Murder.
[c] Burn, Arreſt.
[d] 29 Cha. II, c. 7, § 6. Burn, ibid.
[e] Dalt. c. 170.
[f] Burn, Arreſt.
[g] 1 Salk. p. 79. 2 Hawk. p. 1: Caſes in the time of lord Hardwic p. 301.

§ 8. ARREST IN GENERAL.

such warrant; but in this the law ſeems not to be clearly ſettled [a]. But if the party arreſted eſcape, the officer may, upon freſh ſuit, take him again and again, as often as he eſcapes, though he were out of view, or ſhall fly into another town or county [b].

Eſcape after arreſt.

What happens after arreſt.

WHEN the officer has made the arreſt, he is forthwith to bring the party according to the direction of the warrant. If it be to bring the party before the juſtice who granted the warrant ſpecially, then the officer is bound to bring him before the ſame juſtice; but if the warrant be to bring him before any juſtice of the county, then it is in the election of the officer to bring him before what juſtice he thinks fit, and not in the election of the priſoner [c]. But if the time be unſeaſonable, as in or near the night, whereby he cannot attend the juſtice, or the reſidence of the juſtice at a diſtance; or if the party be ſick, or if there be danger of a preſent reſcue, the officer may ſecure him in his houſe, or other place of ſafety, till the next day, or ſuch time as it may be reaſonable to bring him [d]. If the warrant to apprehend contains, *de plano*, an order for commitment (as is not unlawful, but the ordinary ſtile of thoſe obtained from the lords of juſticiary), the conſtable muſt lodge him immediately in gaol [e].

The warrant ſtrictly obeyed.

May the terms of the warrant only be for the time departed from

If the warrant contains an order for immediate commitment.

A WARRANT to break up doors is not to be executed without neceſſity. The conſtable, or other officer, muſt firſt ſignify to thoſe in the houſe the cauſe of his coming, and requeſt them to give him admittance [f]. If this be refuſed, he may then break open the houſe, whether it be the delinquent's own, or ſome other perſon's who is giving him refuge for the time [g].

May he break open doors.

What muſt he previouſly do?

[a] 2 Hawk. p. 81.
[b] Dalt. c. 169. Burn, Arreſt.
[c] 1 Hale's Hiſt. p. 582. 2 Hale's Hiſt. p. 112.
[d] 2 Hale's Hiſt. p. 120.
[e] Hume, vol. iii, c. 3.
[f] 2 Hawk. p. 86. Hume, vol. iii, c. 2.
[g] 2 Hale's Hiſt. p. 117.

§ 8. ARREST IN GENERAL.

THE ſame is the officer's privilege with us upon a warrant to ſearch any houſe for ſtolen goods, and apprehend the poſſeſſors [a]. If the goods are not there, the officer ſeems juſtified; but he that made the ſuggeſtion may be puniſhable [b].

Warrant to ſearch for ſtolen goods.

THE officer obſerving theſe precautions is not anſwerable, though the party be innocent, or even though no ſuch felony have been committed [c]. But a private individual who breaks up doors to arreſt any perſon, barely on ſuſpicion of felony, does it at his peril; that is, if in truth ſuch perſon be a felon, then it is juſtifiable; but if he be innocent, though upon a reaſonable cauſe ſuſpected, then it is not juſtifiable [d]. For the private individual is not compelled, but only permitted, to arreſt; whereas the officer is puniſhable if he omit it, on complaint [e]. As without a warrant an officer may ſearch for ſtolen goods, though he may not break open doors; ſo, if he enter in the day time, the door being open, and the door be afterwards ſhut, and upon demand refuſed to be opened by them within, if the ſtolen goods are in the houſe, he may break open the door [f].

Can a private perſon break doors to arreſt one on ſuſpicion of felony?

Difference betwixt a private perſon and conſtable.

Power of killing.

As laws and tribunals would little avail were their orders reſiſted and contemned with impunity, their officers, who are intruſted with an important duty to be executed, though at the hazard of their lives, are juſtifiable, under certain circumſtances, even in killing offenders.

Execution of a civil warrant.

AN officer, in attempting to execute a civil warrant, is not juſtifiable in killing the party who merely flies from him; and who, though he may eſcape and diſappoint the

[a] Hume, vol. iii, c. 2, 12, § 3.

[b] 2 Hale's Hiſt. p. 151. Burn, Arreſt.

[c] Ibid.

[d] 1 Hale's. Hiſt. p. 82. Burn, Arreſt.

[e] Ibid. 2 Hale's Hiſt. p. 92.

[f] 2 Hale's Hiſt. p. 151. Burn, Search-warrant.

§ 8. ARREST IN GENERAL.

execution of this particular warrant, yet, far from diſputing, rather ſeems to acknowledge, its authority; and thus neither expoſes the authority of the law, nor of the magiſtrate, to any ſuch hazard of contempt, as to render that extreme meaſure neceſſary; ſo far is clear both by the law of England and Scotland. If there be a warrant againſt a perſon for a treſpaſs or breach of the peace, and he flees, and will not yield to the arreſt, or being taken makes his eſcape; if the officer kills him it is murder [a]. But in the law of England it ſeems farther a fixed point, that "if ſuch perſon, either upon the attempt to arreſt, or after the arreſt, aſſault the meſſenger to the intent to make his eſcape from him, and the officer ſtanding upon his guard kills him, this is no felony; for he is not bound to go back to the wall, as in common caſes *ſe defendendis*; for the law is his protection, and this the neceſſity that he cannot otherwiſe execute his commiſſion [b]."

If he merely runs away?

In the caſe of a treſpaſs or breach.

If he aſſaults the meſſenger?

"THE doubt with us will be, not whether we will go farther, but whether we will go ſo far, and hold a meſſenger juſtifiable for ſuch ſlaughter, as he neceſſarily doth towards execution of a poinding, caption, or other civil diligence, to apprehend [c]."

DEFORCEMENT being a crime which has a diſtinct puniſhment affixed to it, the meſſenger, it has been argued, when reſiſted, ſhould break his wand of peace, and proteſt for *remaid of law*; and is not juſtifiable in killing, unleſs he be ſeriouſly attacked with offenſive weapons. Accordingly, Mackenzie obſerves, that if any man reſiſt the execution of his majeſty's laws, by meſſengers or other public ſervants, in that caſe the meſſenger cannot proceed to kill, as was found

Is our law the ſame with that of England in in thoſe particulars.

[a] 2 Hale's Hiſt. p. 117. Burn, v. Arreſt.
[b] 2 Hale's Hiſt. p. 118. Burn, v. Arreſt.
[c] Hume, Crim. law, vol. i, c. 6, § 4.

§ 8. ARREST IN GENERAL.

in John Macintosh's case [a]. But if the resister do al ceed to offer violence, by drawing upon the messen that case the messenger may lawfully kill him, with necessity of proving that he would have been in dar his life, if he had not killed; though private persons kill when they are invaded, unless they be by that i put in danger of their life [b]. Though, therefore, an may no doubt kill, if it be necessary to carrying his c sion into effect; yet (observes Mr. Hume) the rule, as can be gathered from our records, and in itself a s and reasonable rule, appears to be, that no violence sufficient which does not carry evidence with it to t cer that his life *shall come* to be in hazard, if he per executing his warrant. According to any light with the practice of past times supplies us, the dread of a ling-bout or struggle, or even of a beating or bruising prosecution of the service, shall not be held a relev fence; nor indeed any thing short of the preparation thal weapons against the officer, or of such a pow force as in the whole circumstances of the case pla form him that, but with the terror of his life, he can vance to do his duty [c].

What danger justifies the constable in killing.

Will the dread of a wrestling-bout, or beating, justify him.

THE difference, therefore, between an officer and o man, lies here,—an individual, to justify his killing vader, must be in actual and imminent danger of h life *as at the moment of killing*, and so situated that ur killing the invader, he has no means of escaping aliv the officer shall be acquitted, *if at the time of killi* danger be in near and *manifest preparation for him*, s reason to convince him that he shall come to be in *d his life* in the farther prosecution of his duty, and a

[a] May 11, 1612. Mr. Hume observes this point, though among others, largely debated was not decided in this case.

[b] Mackenzie, Crim. law, der, No. 19.

[c] Ibid.

§ 8. ARREST IN GENERAL.

rting the ſervice he might at once put an end to the . A meſſenger, for inſtance, bearer of a caption, if l a *poſſe* of the debtor's friends poſted at the door rawn ſwords, and reſolute to oppoſe his entry, may dvancing and firing upon them, though no thruſt t been made at him, and before coming within reach r weapons; for his life and theirs are not, in theſe ſtances, of equal value to the law; nor is he obliged ſe himſelf ſo far on their account [a].

Power of killing, in the caſe of criminal warrants.

xecuting criminal warrants, the officer's powers are ader. By the law of England, where a warrant if- gainſt a perſon for a felony, and either before or af- ft he flies and defends himſelf with ſtones or weapons, : the officer muſt give over his purſuit, or otherwiſe take him without killing him, if he kill him it is no ; and the ſame law is for a conſtable that doth it by of his office on hue and cry [b]. But the party ought information of the reaſon of the purſuit, viz. that a warrant againſt him; and it muſt be a caſe of ne- but not ſuch a neceſſity as in the former caſe, (a war- r a treſpaſs, or a breach of the peace), where an af- s made upon the officer; but this is the neceſſity, , that he cannot otherwiſe be taken [c]. But though a perſon may arreſt a felon, and if he fly ſo as he can- : taken without he be killed, it is excuſable in this r the neceſſity; yet it is at his peril that the party be ; for if he be innocent of the felony, the killing (at efore the arreſt) ſeems to be at leaſt manſlaughter: for ocent perſon is not bound to take notice of a private per- ſuſpicion; although whether innocent or not, he to yield himſelf to the officer of the law, and anſwer charge on record againſt him; but that the practice

What neceſſity juſtifies the conſtable?

In the caſe of private perſons?

me, Crim. law, vol. i, c. 6, § 4. [c] 2 H. H. p. 119. Burn.
i, H. p. 118. Burn, Arreſt.

§ 8. ARREST IN GENERAL.

of Scotland ſhall in all points be governed by the ſame
ſiderations, and in particular that it ſhall make the ſam
lowance in caſe of the felon barely flying from the wa
that is out againſt him, cannot perhaps be affirmed [a].

Is the law of Scotland the ſame here with that of England?

above-mentioned act 1662, c. 6, impowering juſtic
peace, &c. to make "all the ſenſible men in the pariſh
"cur with them in purſuit of goods way-taken, and
"waytakers thereof," declares, that in "caſe it ſhall
"pen the parties, whoſe goods are taken, or thoſe tha
"obliged to riſe with them in manner foreſaid, to ſlay, l
"mutilate, in the ſaid purſuit, the waytakers or their
"ciates, yet notwithſtanding they ſhall never be draw
"queſtion, nor liable in any purſuit, civil or criminal,
"ſaid ſlaughter, mutilation, &c. but are hereby as fi
"remitted as if they had our ſovereign lord's ſpecial c
"miſſion for that effect [b]." The general act [c], paſſed
"removing all queſtion and doubt that may ariſe
"after in criminal purſuits for ſlaughter," among othe
ſtances of juſtifiable homicide, ſtates the three following
micides, "in time of manifeſt depredation, *or* in purſu
"denounced or declared rebels for capital crimes, *or* of
"who aſſiſt and defend the rebels and depredators by a
"and by force oppoſe the purſuit and apprehendin
"them." Theſe maſterful depredators were bands of H
land thieves, who ſo late almoſt as 1745, were in u
make incurſions into the low country, and carry off w
herds of cattle in a maſterful and warlike manner. T
lawleſs bands, as alſo declared and denounced rebels fo
pital crimes, the act authoriſes the inhabitants to attack
even kill, in the purſuit, although they were not in a
ture of violence or defence [d]. But betwixt theſe two cl
and the third, viz. thoſe who aid and aſſiſt, the act m
this diſtinction, that the latter it is not lawful to kill, u

[a] Hume, Crim. law, vol. i, c. 6, §. 3.
[b] Cha. II, parl. 1, ſeſſ. 2, c. 6.
[c] Cha. II, parl. 1. ſeſſ. 1661, c.
[d] Gardenſtone, MS. Murder.

:ſiſt with arms, and oppoſe the apprehenſion of the als with force; whereas the former, like public ene- nd outlaws, may be killed when running away. But caſe of officers of the law and their aſſiſtants execut- riminal warrant to apprehend one, even upon the ac- n of a capital crime, no deciſion has yet gone the of juſtifying the ſlaughter of the party who ſeeks his merely by flight[a].

§ 2. ARREST IN GENERAL.

a Gardenſtone, in his manuſcript, tit. Murder, ſays it is clear that of the law are not juſtifiable to kill one who flies away.

CHAP. IX.

Of Commissioners under the Comprehending Acts.

§ 1. THEIR ORIGIN.

I. EVERY man, in return for the protection he receives from the ſtate, is bound to yield military ſervice when neceſſary for its defence. This duty is coeval with the national union. In Greece and Rome every freeman was a ſoldier; and (though the training was not ſo ſyſtematic and regular,) the ſame was formerly the caſe in all the European nations, and particularly among the warlike inhabitants of this iſland. In England commiſſions of array levied the peaſantry of the different counties; and in Scotland they were led by the ſheriffs, either immediately or more remotely, as the vaſſals of feudal ſuperiors. And although the feudal laws always ſtrove to appropriate the vaſſals to their reſpective chiefs, and ſeparate them from their general allegiance to the ſtate, yet not even in France, at the very height of feudaliſm, did the king relinquiſh the right in caſes of great emergency [a], to call immediately for the ſervice of all the lieges, whether holding of the crown or others. The term *ban* [b] was derived from

[a] *Arrierban* eſt extraordinarium. Si quando reipubliciæ neceſſitas exigit. Craig, De feud. lib. ii, dig. 12, § 36.

[b] *Ban.* A Saxo *pan* pro extenſo et expanſo: videntur radicem ſumsisse inde *pan, ban* (quibus alii *d* adjiciunt in fine) pro vexillo. (Spelm. Gloſſ. in vocem.)

the ſignal employed to ſummon the people to take arms; the *fiery croſs* was the ſignal in this country, which none could diſobey with impunity. § 1. THEIR ORIGIN.

OWING, indeed, to the fortunate ſituation of this iſland, it has been ſeldom neceſſary to call out the great body of the people; and the feudal tenure of military ſervice (later here than in ſome other countries) came to be commuted into money, with which regular troops were inliſted and paid. But the enactments reſpecting levies, and the ſucceſſive changes in the nature of our armaments, will fall more properly to be noticed when we come to treat of the ſtate military, including the army, navy, militia, &c. Our preſent object is to explain, in general, the juriſdiction of thoſe commiſſioners, who have been occaſionally empowered by ſpecial acts of parliament, to ſeize and impreſs for the public ſervice, idle and vagabond able-bodied young men. Such offenders had always been liable to be ſeized and puniſhed, or put to work, by the judge ordinary. This power of impreſſing ſuch perſons was intruſted to commiſſioners of ſupply, by a clauſe in two of "the acts for the levies," which paſſed in the reign of king William, 1695, c. 33, and 1696, c. 23.

II. THESE acts proceed upon the narrative, "that all he- § 2. REGULATION OF KING WILLIAM'S ACTS.
"ritors, and the ſuperior ſort of his majeſty's lieges, do
"really contribute to the expence of the war, by payment
"of ſupplies and other public burdens; and that it there-
"fore ſeems moſt reaſonable that the inferior ſort, who
"contribute little or nothing, eſpecially young men without
"wives or children, ſhould be compelled to contribute their
"perſonal ſervices in the war for a certain ſpace, which is
"manifeſtly moſt neceſſary for the defence and ſecurity of
"themſelves and the whole kingdom, beſides the other ad-
"vantages of profit and honour that may thereby accrue to
"them." And accordingly theſe acts ordain the commiſ- Perſons to be comprehended.

§ 2. REGULATION OF KING WILLIAM'S ACTS.

ſioners of ſupply, &c. *firſt*, to deſign, and cauſe be given, the idle, looſe, and vagabond, perſons, liable by former acts to be ſeized by ſheriffs, withing their reſpective bounds; *ſecondly*, to call out by lot the other young fencible men, who had not wives or children.

§ 3. BRITISH COMPREHENDING ACTS.

III. SINCE the Union certain acts of parliament have been paſſed, from time to time, commonly called "compre-"hending acts." The laſt of theſe, 19 Geo. III, c. 10, § 1 empowers juſtices of peace, commiſſioners of the land-tax and magiſtrates of boroughs, to impreſs all able-bodied, idle and diſorderly perſons, who cannot, upon examination, prove themſelves to exerciſe, and induſtriouſly follow, ſome lawful trade or employment, or to have ſome ſubſtance ſufficient for their ſupport, &c.; as alſo, perſons convicted of running goods, or of being aiding therein, and who are liable in a penalty not exceeding 40l. &c. This act materially differed from former ones, with regard to the eaſe and protection that it afforded the magiſtrates employed in executing it.

Perſons to be comprehended.

IN the records of the juſtices of the county of Edinburgh, there appears a complaint in the name of William Wilſon, priſoner, ſtating, that although he produced a paſs and certificate that he had a calling, he was nevertheleſs ſeized by a recruiting officer in Argyleſhire, and brought by him to town, and was ſtill detained in his cuſtody. The officer ſtated, that the priſoner had been made over to him by the ſheriff of Argyleſhire as a vagabond; but produced no evidence of the aſſertion. The juſtices found him unwarrantably ſeized, and ordained him to be ſet at liberty, and prohibited the recruiting officer from troubling him. Comprehending acts, paſſing on the exigency of the moment, are temporary.

§ 4. REVIEWABLE.

IV. A GENERAL queſtion ariſes under all thoſe acts, how far the commiſſioners acting under them are liable to the re-

view of courts of law? And there has always been ſome difference of opinion on the bench reſpecting the import of ſuch clauſes as this, "that the perſon ſo inliſted ſhall not be taken "out of his majeſty's ſervice by any proceſs of law, excepting "for a criminal act;" which clauſe alſo occurs in the mutiny, militia, and other enactments, for raiſing men for the army and navy. The late lord juſtice-clerk Macqueen was of opinion that it did not apply to any caſe where the validity of the inliſtment was the queſtion in diſpute; and this ſeems to have been in general the prevailing opinion, the ſupreme court never having thought itſelf precluded from taking cogniſance of complaints againſt ſuch commiſſioners, not for a wrong judgment under the ſtatute, but for acting in the face of it, and diſobeying its injunctions. One inſtance of this occurred in the caſe of a man, who objected to his inliſtment, on the ground that he was upwards of fifty years of age, under which alone the act allowed perſons to be comprehended. The court paſſed the bill; being generally of opinion, that its power of review, from its inherent and conſtitutional juriſdiction, was not excluded by this ſtatute[a]. § 4. REVIEWABLE.

A DECISION, ſomewhat contrary, had been pronounced in the preceding year[b], in the caſe of two men, who being impriſoned by warrant of the commiſſioners, and ordained to be delivered to the commanding officer, preſented a bill of ſuſpenſion and liberation, offering evidence *of their good behaviour, and that they followed a lawful employment, being hired ſervants, and that the commiſſioners refuſed to receive that evidence.* The bill was refuſed; upon the principle that the judgment of the commiſſioners could not be reviewed in a court of law. The court, however, was much divided in opinion; and in the ſubſequent caſe of Cowpar and others

[a] Patullo againſt ſir William Maxwell, 25th June 1779. Fac. Coll.

[b] 9th Aug. 1778, Foot and Marſhall againſt Major Stewart. Fac. Coll.

§ 4. REVIEWABLE.

againſt ſir John Ogilvy, the court, after a hearing in preſence, and upon the moſt ſolemn conſideration, ſuſtained its competency to give redreſs in ſuch circumſtances [a]. Indeed, if acceſs to the ſupreme court in the *moſt ſummary manner* were denied in ſuch caſes, the moſt oppreſſive conſequences might enſue.

[a] Dict. vol. iii, p. 342. See alſo p. 344, caſe of the counteſs of Loudon againſt truſtees on Ayrſhire roads; 28th May 1793.

CHAP. X.

Of Commissioners of Supply.

§ 1. OF THE OFFICE IN GENERAL.

I. THE office of commiſſioner of ſupply is another opportunity, which the wiſe policy of our government affords to gentlemen, whoſe fortune does not require profeſſional purſuits, and whoſe inclination keeps them *procul a republica*, of turning their leiſure to the public advantage.

COMMISSIONERS of ſupply, while they have a joint charge with juſtices of peace, of roads, bridges, and ferries, beſides being employed with ſome other magiſtrates in executing the comprehending acts, have the ſole and excluſive charge of levying the land-tax, and dividing valuations. They indeed derive their name from this, their moſt appropriate and important buſineſs.

§ 2. COMMISSIONERS OF SUPPLY, HOW NAMED—NOMINATION OF.

COMMISSIONERS of ſupply are named in the yearly acts impoſing the land-tax, for levying it, as well as adjuſting the valuations of the ſeveral lands in each county [a].

[a] The act of convention, 1667, firſt put commiſſioners on their preſent footing; and contains the rules and powers which are referred to and adopted by the ſubſequent ſtatutes, Britiſh and Engliſh. The following

§ 4. NOMINATION OF.

IN the county of Perth ſome additional commiſſioners of ſupply being needed, their names were inſerted in an act for enforcing certain duties on penſions and offices in England, but not appearing to relate at all to the commiſſioners of ſupply for the county of Perth. At a meeting for chooſing a collector, the votes of thoſe additional commiſſioners were objected to; and though a ſuppletory act had been obtained, indemnifying the gentlemen named for acting as commiſſioners, yet the election of the collector, which depended on their votes, was ſet aſide; the court of ſeſſion being of opinion that the ſuppletory act could not operate *retro*, ſo as to affect the rights of any individual; and though it was clearly the intention of the act to name the gentlemen as commiſſioners of ſupply for Perth, ſtill it had not been carried into effect [a].

§ 3. QUALIFICATION.

III. THE Scottiſh acts name the moſt reſpectable gentlemen and noblemen to collect the ceſs of their reſpective counties; and "for the burghs, the magiſtrates of the ſame "for the time being, with power to them to chuſe fitt "maſters within their reſpective bounds."

BUT the Britiſh acts declare that none of the commiſſioners named for the county, ſhall be capable of acting without being infeft in ſuperiority or property, or poſſeſſed as proprietor, or liferenter, of lands, valued in the tax-roll of the county where he acts, to the extent of 100l. Scots per annum.

THE act makes no diſtinction between ſuperiority and pro-

are the dates of the different acts, almoſt downward to the union: 1670, c. 3; 1672, c. 4; act of convention, 1678, 1681, c. 3; 1685, c. 12; 1685, c. 34; 1686, c. 2; 1689, c. 32; 1690, c. 6, 9, and 10; 1693, c. 9; 1695, c. 10.

[a] 1802, Jan. 19, Stewart againſt Kinloch. Fac. Coll.

perty. The ſame lands, therefore, qualify both the ſuperior and the vaſſal to act as commiſſioners [a]. And two vaſſals, one of them holding baſe of the other, were both found qualified to act [b]. § 3. QUALIFICATION.

MR. WIGHT obſerves, if this deciſion be well founded, it is hard to ſay where it will ſtop. It ſhould ſeem that as many may act in reſpect of one parcel of land of 100l. valuation, as there may be ſubfeus of it granted [c].

THE acts, as they have hitherto been framed, make no exception of lands of an old extent, proved by a retour before 1682. A freeholder, therefore, though eligible to repreſent the county in parliament, may not have valuation to qualify him for a commiſſioner of ſupply.

ANY perſon who ſhall take it upon him to act without the proper qualification, ſhall forfeit 20l. ſterling for every ſuch acting, to be recovered by action, complaint, or petition, in a ſummary way, at the ſuit of any heritor within the county, before the county court, or the court of ſeſſion. But the court of ſeſſion ſeems now to think it ſufficient to inflict one penalty for one meeting, even though adjourned from one day to another; and though the perſon complained of may have acted in many different points. Coſts have alſo been refuſed in one caſe [d]. A different judgment, in both reſpects, had been given in former caſes [e]. Penalty for acting without a proper qualification.

IN the caſe of Gordon againſt Forbes, the latter, who was appointed factor on the forfeited eſtate of Cromarty, plead-

[a] Bank. Inſt. 1. b. iv, tit. 18, par. 1.
[b] 21ſt Jan. 1766, ſir John Gordon againſt Anderſon. Dict. Deciſ. vol. 3.
[c] Wight, b. iii, c. 2.
[d] July 25, 1755, Macadam againſt Logan.
[e] 1766, ſir John Gordon againſt Forbes.
Idem, againſt Forſyth, Wight, b. i, c. 1, p. 192.

§ 3. QUALIFICATION. ed that it had been the practice to appoint factors in the al ſence of their conſtituents; and that this ought at leaſt f far to be ſuſtained as to exempt him from the penalty in re ſpect of his *bona fides*. This defence was ſuſtained by th firſt interlocutor; which however was altered on farth conſideration, and captain Forbes found liable in the ſtatut ry penalties.

Nullity. THE payment of the penalty does not ſupply the want o the qualification, ſo as to validate the actings of any perſo as commiſſioner who has not land to the requiſite exten The words of the ſtatute are extremely expreſs, that no ſhall be enabled, or capable to be a commiſſioner of the lan tax, or for executing the ſeveral powers and things here enacted, without, &c.

Exceptions where the qualification is not required. THERE are two exceptions; the one is, the eldeſt ſo and heirs-apparent of perſons ſo infeft in lands to the r quiſite extent and valuation; the other is, provoſts, bailie dean of guild, treaſurers, maſters of merchant companies, o deacon conveners of trades for the time being, of any roya burgh, and bailies for the time being, of any borough of re gality or baony.

§ 4. OATHS. Allegiance. Abjuration. Aſſurance. Penalty. IV. THE yearly land-tax acts requires that the commiſſion ers, before proceeding to act, ſhould take and ſubſcribe th oath of allegiance and abjuration, and ſubſcribe the aſſuranc appointed by law, to be taken by perſons in offices and pub lic truſt in Scotland, under the pain of forfeiting 20l. ſter ling.

If a nullity. THE court of ſeſſion found a diviſion of valuation void becauſe the commiſſioners had not taken the oaths of alle giance and abjuration [a]. But the ſtatutes do not declare th

[a] 8th July 1751, Sutherland.

proceedings of ſuch commiſſioners to be void and null; and in a later caſe [a], the court was unanimouſly of opinion that it did not infer a nullity; and that the former caſe had been erroneouſly decided. In this caſe many inſtances were given of valuations being divided by commiſſioners who had not taken the oaths; and the clerks to the commiſſioners for Ayrſhire reported, that they never knew one inſtance of their taking the oaths to government at any meeting, except the general meeting, 30th April. "The oaths are only produced at that meeting, and never called for at any other. When a new nomination coming down, I ſhould think it neceſſary to take the oaths at the firſt meeting thereafter, that ſuch new commiſſioners might at preſent be qualified; but that has not happened here, as I obſerve from the rolls of the oaths no commiſſioners have ever qualified but at the general meeting in April yearly." Were therefore ſuch objection to be ſuſtained againſt a diviſion of valuation, few or none had taken place in that county for ſome years paſt, which might not be challengeable; the ſame looſeneſs was found to prevail in ſeveral other counties; and in one it was ſaid to be the practice to qualify only once every parliament, when the ſeparate act is paſſed naming the commiſſioners. §4. OATHS.

V. THE commiſſioners of ſupply are intitled to name their convener from time to time, and may remove him at their pleaſure [b]. §5. NOMINATION OF THE CLERK AND COLLECTOR.

THEY are empowered to name likewiſe a collector and a clerk, whom they may allow ſuitable ſalaries. Dr. Burn obſerves, the expreſſion of the ſtatute is, that the clerk is to be appointed by a majority at each reſpective meeting; but lord Mansfield ſaid, "if clerks were appointed under the land-tax

[a] 1787, Feb. 20, Campbell againſt Macdowal. Fac. Coll.
[b] 1767, Dec. 24, Pultney againſt ſir John Gordon. Ibid.

§ 5. NOMINATION OF THE CLERK.

" act each time of meeting, there would be no en
" elections." A competition having taken place for
lector of the ceſs for the county of Roſs, the diſa
candidate brought an action before the court of ſeſſi
cluding for having it declared that the election w
and ought to be reduced, and that he himſelf ough
elected. He called as defenders his competitors a
of the commiſſioners of ſupply, who had concurred
appointment. The defenders objected, that all part
ing an intereſt had not been called; and the lord
" ſuſtained the defence, that the whole of the comm
" of ſupply who voted for, and elected, Kenneth M
" of Kilcoy, upon the 30th of April laſt, were not
" parties to this proceſs." The lords adhered [a].

§ 6. TIME AND PLACE OF MEETING.

VI. THE yearly acts ſpecify the time and place
firſt meeting. It is ordained to be held at the head b
of their ſeveral ſhires on a certain day, named in ea
and they are empowered to name the ſubſequent
their meetings, and to name their conveners from
time. " This is wiſely ordered, to prevent packed
" ings of a few commiſſioners for the purpoſe of ſ
" job [b]."

NOTWITHSTANDING an adjournment, the conve
call a general meeting, upon the application of an
having intereſt [c]. Where the commiſſioners had n
to name a convener, the court of ſeſſion have ordai
ſheriff to call a meeting on proper advertiſement [d].

§ 7. QUORUM.

VII. THE acts appointing commiſſioners of ſu
very inaccurate in one reſpect, namely, as to the
of commiſſioners that muſt be preſent in order to co

[a] Roderick Mackenzie againſt Kenneth Mackenzie, 1771, February.
[b] Wight, p. 193.
[c] Dec. 14, 1756, ſir Rob don. (Wight, p. 194.)
[d] Ibid.

a *quorum*. But, in practice, the commiſſioners act at their meetings as if they were not confined to any quorum [a]. § 7. QUORUM.

THE proceedings of the commiſſioners are ſubject to the review of the court of ſeſſion, as the ſupreme civil court of the nation. It ſeems ſufficient to ſtate this much here in general. The particular detail will be more properly deferred to thoſe chapters which explain their duty, whether acting by themſelves or along with juſtices of peace.

[a] Wight, p. 194.

BOOK II.

OF THE PEACE.

CHAP. I.

Of Breaches of the Peace.

§ 1. GENERAL VIEW.

I. HAVING already taken a general ſurvey of the hiſtory, powers, and procedure, of the ſeveral offices, we ſhall now, with more advantage, proceed to the other, and more extenſive, branch, namely, the *objects* of their juriſdiction, under the general heads already mentioned; of the public peace, the police, improvement of the country, & The ſubdiviſions will bring under our particular conſideration the powers and duties of the reſpective magiſtrates.

§ 2. PEACE, WHAT IT IS

II. PEACE, extenſively taken, includes every duty. It means, what Cicero [a], after Ariſtotle [b], calls *obtemperatio*

[a] *Lib.* 1, *de legibus.* [b] *Lib.* 5, *Ethic.* 1.

§ 2. PEACE, WHAT IT IS

ſcriptis legibus et inſtitutis populorum; or, as it may be well rendered, "walking in all the commandments and ordinances of the law blameleſs [a];" which Juſtinian reduced to theſe three precepts, that we ſhould live honeſtly, ſhould hurt no body, and ſhould render to every one his due [b]. The firſt includes thoſe claſſes of duties, the neglect of which giving public ſcandal, and ſetting an evil example, thus indirectly proves injurious to others. Theſe are enforced by the laws for checking impiety, irreligion, &c [c]. The ſecond prohibits our injuring another in his perſon or character [d]. The third has in view the protection of property, againſt all manner of injuſtice, that we ſhould not touch what does not belong to us, and that we ſhould pay the debts which are due by us [e]. In ſhort, every action that in any of thoſe points of view is the object of criminal juſtice, may thus be conſidered as a breach of the peace, which, in this extenſive

[a] Luke, c. i, v. 6.

[b] Inſt. lib. i, tit. 1. § 3. *Juris præcepta ſunt hæc honeſte vivere, alterum non lædere, ſuum cuique tribuere.*

Both Harris, in his tranſlation of the Inſtitutes, and judge Blackſtone, render *honeſte vivere* "to live *honeſtly*." Profeſſor Chriſtian thinks it ſhould be rather rendered "to live "*honourably*, or with *decorum* and *decency*." It is certainly true, as the learned profeſſor remarks, that this precept "was intended to comprife "that claſs of duties of which the "violations are ruinous to ſociety, "not by immediate, but remote, "conſequences; as drunkenneſs, de-"bauchery, profaneneſs, extravagance, "gaming."

But as the Latin word *honeſte* unqueſtionably has this ſignification, ſo there ſeems to be no reaſon to doubt that thoſe two learned authors meant the ſame thing by the term *honeſtly* which, as well as the ſubſtantive *honeſty*, and the adjective *honeſt*, is uſed in the ſame extenſive ſenſe by the acknowledged ſtandards of pure Engliſh; for example, by the tranſlators of the Bible. See 1 Timothy, c. v. 2; Romans, c. xiii, v. 13; and Peter, c. ii, v. 12.

[c] *Et primo quidem, quo vita honeſta præcipitur, intelligi oportet vetari ſa omnia, quæ lædant pietatem, verecundi exiſtimationem noſtram et generalitur pugnant cum legibus, bonis moribus et lica honeſtate.* (Vinnius Com. ad I

[d] *Ne alicujus vitam, aut incolu tem, libertatem, exiſtimationem lædi aut violemus.* Vin. Ibid.

[e] *Tertium ad res externas: ut ab a manus abſtineamus hoc eſt, res alterius attrectemus, aut minuamus; ut pactu unumquemque rebus ſuis uti, ut redda quod alienum apud nos eſt.* Ibid.

§ 2. PEACE, WHAT IT IS

ſuſe, is defined by the Engliſh lawyers to be "any interruption of the confidence, quiet, and amity, that is between men [a]."

THIS extenſive definition of peace naturally aroſe from a political truth, that the magiſtrate, having no cure of ſouls, cannot lawfully puniſh any action, unleſs ſo far as it is injurious, or gives diſquiet and diſturbance to others. Human laws cannot enforce thoſe duties which men, as moral and religious agents, owe to the Deity, or to themſelves, or which affect certain rights of others, thence called *imperfect*; ſuch as the right of the benefactor to gratitude; of the unhappy to compaſſion; of the needy to relief. The avenging ſword [b] can no more be unſheathed by the magiſtrate after, than by the injured individual before, the inſtitution of government, if the action be ſinful or immoral only; it muſt, moreover, be injurious to the *perfect* rights of other men.

BUT *peace*, in common language, is uſed in a more limited ſignification; and has been defined to be "any injurious "force, or violence, moved againſt the perſon of another, "his goods, lands, or other poſſeſſions, whether it be by "threatening words, furious geſture, or by force of body, "or by any other force uſed *in terrorem* [c]."

OUR attention, then, muſt firſt be directed to violations of the peace, in this narrower ſenſe; which claſs of offences chiefly occaſioned the inſtitution of juſtices of peace; gave that magiſtracy its name, and ſtill form its wideſt, moſt peculiar, difficult, and important province.

BREACHES of the peace, though (even in this reſtricted Diviſion of breaches of the peace.

[a] Fitzgerbert's Juſtice of peace, 31. Dalton, c. iii.

[b] *Gladius ultor.* Codex, lib. 9.

[c] Dalton, c. iii.

§ 2. PEACE, WHAT IT IS

ſenſe) multifarious, differing in their features, characters, and conſequences, and not correctly admitting any one definition, are however all of them either general or public in their object, or private only.

§ 3. PUBLIC— TREASON.

III. THE firſt claſs of breaches of the peace, or thoſe having a public object in view, may be introduced by the crime of high treaſon, the greateſt of all civil crimes. It is derived from the French *trahiſon*, deceit. Neither treaſon, nor miſpriſion of treaſon, are within the letter of the commiſſion of the peace. Theſe crimes are not competent to be tried before the ſeſſions; but they fall under the cognizance of this magiſtracy as offences againſt the peace of the king and of the realm. And any one juſtice of peace, either from his own knowledge, or the complaint of others, muſt take meaſures for the apprehenſion of perſons ſuſpected of ſuch crimes; take the declaration of the delinquent, or of others who can give evidence againſt him; put the ſame in writing, commit the delinquent for trial, and bind over others to give evidence againſt him [a]. And generally, where a perſon is committed for treaſon, it is adviſable, Dr. Burn obſerves, for the juſtices of the peace to ſend an account of all the particulars immediately to the ſecretary of ſtate [b]. It will not be neceſſary, therefore, to enter more fully into this offence than merely to ſtate, in general, thoſe circumſtances which are neceſſary, according to the Engliſh lawyers, to conſtitute it.

How it falls under the juriſdiction of juſtices.

Duty of juſtices when any perſon is committed for treaſon.

Treaſon, proper or high, what is it.

TREASON was, by the old law of Scotland, either proper or ſtatutory. The *firſt* included thoſe facts which were treaſonable by the common law; ſuch as contriving the death of the ſovereign, or laying him under reſtraint in his perſon, or in the exerciſe of the government; raiſing

[a] 2 Hawk. p. 39. Hall, p. l. 168. [b] Burn's Juſtice, tit. Treaſon. 1 Hale's Hiſt. p. 372.

lay in the hoſt without a cauſe; levying war againſt him, or inciting others to invade him; the aſſaulting of caſtles where he reſided; the endeavouring to alter the ſucceſſion; impugning the authority of the eſtates of parliament; the making of treaties, either with ſubjects or with foreign ſtates, or maintaining any forts without the king's conſent; and the reſetting or concealing of traitors[a]. The *ſecond* included all crimes which, though not of their own nature carrying in them any of the diſtinguiſhing characters of proper treaſon, yet were puniſhable by ſtatute with the pains of treaſon, viz. theft by landed men[b]; murder under truſt[c]; wilfully ſetting fire to coalheughs[d], or to houſes, or corns[e]; and aſſaſſination[f]. § 3. PUBLIC—TREASON. Statutory treaſons, by the old Scottiſh law.

THE puniſhment of treaſon, whether proper or ſtatutory, was death, and the forfeiture to the crown of the traitor's ſtate, both real and perſonal; and the extinction of all the heritable dignities, honours, or privileges, that the king had conferred on him. The year immediately enſuing the Union of the two kingdoms, anno 1707, the Britiſh parliament judging it reaſonable that the whole united kingdom ſhould be governed by the ſame law in the matter of treaſon, as their obligations to loyalty were the ſame, declared, by 7 Anne, c. 21, that the laws of high treaſon that then obtained in England, ſhould alſo take place in Scotland, not only with reſpect to the facts which conſtituted that crime, but in relation to the forms of trial, the corruption of blood, and all the other penalties and forfeitures conſequent on it[g]. The facts, which by the former law of Scotland inferred ſtatutory treaſon, are by this Britiſh act declared to be ſimply capital crimes[h]. Engliſh treaſon laws extended to Scotland.

[a] 1449, c. 24; 1455, c. 54. 1584, c. 30; 1661, c. 5; 1662, c. 2.
[b] 1587, c. 50.
[c] Ibid, c. 51.
[d] 1592, c. 146.
[e] 1528, c. 8.
[f] 1681, c. 15.
[g] Erſk. b. iv, tit. 4, § 20, p. 758.
[h] Ibid.

§ 3. PUBLIC—TREASON.

THE Engliſh treaſon laws are founded upon the 25 ward III, c. 2, which lord Hale calls a ſacred act, and Coke an excellent act; and the king, who made it, a bleſ king; and the parliament a bleſſed parliament; as more p ciſely than before deſcribing and fixing this crime; a mat of ſo much importance, that if the crime of high treaſon indeterminate, this alone (ſays the preſident Monteſquieu is ſufficient to make any government degenerate into ar trary power. This ſtatute, then, like the *lex Julia majeſ tus* of the Romans, contains the whole code of treaſ laws, with the exception of a few explanations and ad tions by ſubſequent enactments. This ſtatute comprehen all kinds of high treaſon, under ſeven diſtinct branches.

Engliſh treaſon law on what ſtatute founded.

Danger from the law being indeterminate.

1ſt, Compaſſing the king's death.

FIRST, when a man does compaſs, or imagine, the de of our lord the king, of our lady his queen, or of their e eſt ſon and heir. This deſcription includes a queen-regna but not her huſband [b]. The king in poſſeſſion, whether rightful heir of the crown or not, is here intended [c].

THE terms, compaſſing or imagining, are ſynonymo the word compaſs, ſignifying the purpoſe or deſign of mind or will [d], and not, as in common ſpeech, the carry ſuch deſign into effect [e]. It is not treaſon, therefore, wound the king mortally by an accidental ſtroke, with any traitorous intent.

How to be proved.

BUT the "compaſſing, or imagining," being an act of mind, muſt be demonſtrated by an open or *ouvert* act. T to provide weapons or ammunition for the purpoſe of kil

[a] L'Eſprit des Loix, liv. xii, c. 7. *C'eſt aſſez que le crime de leſe majeſté ſoit vague, pour que le gouvernment degenere en deſpotiſme.*

[b] 3 Inſt. 7. 1 Hale, P. C. 106. Blackſtone, b. iv, c. 6.

[c] Ibid.

[d] Coke 3. Inſt 5.

[e] 1 Hale, P. C. 107. Blackſt ibid.

the king [a]; to conſpire to impriſon the king by force, and move towards it by an aſſembled company [b]; aſſembling, and conſulting on the means, to kill the king [c]; theſe, and all ſuch meaſures taken to render treaſonable purpoſes effectual, are ſufficient ouvert acts of high treaſon [d]. §. 3. PUBLIC—TREASON. Ouvert acts, what?

WORDS how wicked ſoever, unleſs it be by ſome particular ſtatute, do not amount to an ouvert act of treaſon, but to a high miſdemeanour only. But if they are attended, or followed, by a conſultation, meeting, or any act, they will be evidence, or a confeſſion, of the intent of ſuch conſultation, meeting, or act; but "looſe words, not relative to facts, "are no more than bare indications of the malignity of the "heart [e]." Words.

EVEN words ſet down in writing, though that argues more deliberate intention, yet if they are merely ſpeculative, without connection with any plan of treaſon, are no ſufficient ouvert acts of treaſon; a doctrine which was recognized by the court of juſticiary at a period of no remarkable judicial purity [f], and has the beſt poſſible foundation in the parliamentary reverſal and general diſcontent which followed the condemnation of Algernon Sidney. Writings.

[a] 3 Inſt 12. Black. ibid.
[b] 1 Hale, P. C. 109.
[c] 1 Hawk. P. C. 38. 1 Hale, P. C. 119.
[d] Black. b. iv, c. 6.
[e] Foſter, p. 202.
[f] 6th Sept. 1693, Robert Calder. Though the paper libelled in this caſe was no abſtract ſpeculation, but the draught of a manifeſto addreſſed to the people, and exciting them to take up arms for reſtoring the epiſcopal government; the deciſion of the court of juſticiary was as follows: "finding the manifeſto mention-"ed in the indictment does contain "treaſonable matters; but finds that "the pannel's being the framer or "writer thereof does not infer the "crime of treaſon againſt him, un-"leſs he had ſhewn or divulged it to "ſome perſon before it was ſeized, "or among his papers; yet finds the "ſame relevant to infer an arbitrary "puniſhment."

§ 3. PUBLIC—TREASON.

SECOND.—"If a man do violate the king's com
"or the king's eldeſt daughter, unmarried, or the
"the king's eldeſt ſon and heir." By the king's con

2d, Violating the king's wife, &c.

is meant his wife; and by violation is meant carnal
ledge, as well without force as with it; and this is hi
ſon in both parties, if both be conſenting. The "p
"tention of this law," ſays judge Blackſtone, "is t
"the blood royal from any ſuſpicion of baſtardy, w
"the ſucceſſion to the crown might be rendered d
"and therefore when this reaſon ceaſes, the law
"with it; for to violate a queen, or princeſs-dow
"held to be no treaſon[a]." But Dr. Chriſtia n
"that the inſtances ſpecified in the ſtatute do no
"much conſiſtency in the application of this reaſ
"there is no protection given to the wives of the y
"ſons of the king, though their iſſue muſt inhe
"crown before the iſſue of the king's eldeſt daughte
"her chaſtity is only inviolable before marriage, wh
"children would be clearly illegitimate[b]."

3d, Levying war againſt, &c.

THE *third* ſpecies of treaſon, is, if a man do le
againſt our lord the king in his realm. This s
done by taking up arms, not only to dethrone the kin
under pretence to reform religion or the laws, or to r
evil counſellors, or other grievances, whether real
tended; to attempt, by intimidation and violence, t
the repeal of a law; to reſiſt the king's forces by def
a caſtle againſt them; to make an inſurrection, w
avowed deſign to pull down all incloſures, all brothel
the like. Theſe are inſtances, each of them, of levyi
againſt the king. But a tumult to pull down a par
houſe[c], or lay open a particular incloſure, amounts a

[a] Com. b. iv, c. 6, p. 81.
[b] Blackſtone, edit. 1800.
[c] Upon this principle the great meal mob, commonly called Sh mob, and Porteous' mob, they had great affinity to

riot, being no defiance of public government; ſo alſo o treaſon if two ſubjects quarrel and levy war againſt ther. § 3. PUBLIC—TREASON.

aſſail any of the king's ſhips upon the narrow ſeas, is ng of war within the realm.

ITH.—If a man be adhering to the king's enemies in lm, giving to them aid and comfort in the realm, or ere; ſending them intelligence, even although it be intercepted [a]; furniſhing them with proviſions; trouſly ſurrendering a fortreſs, or the like, theſe are all es of this treaſonable adherence; foreign pirates, or s, who happen to invade our coaſts; fellow ſubjects al rebellion at home, are in the ſtatutory ſenſe of the he king's enemies. 4th, Aiding the king's enemies.

TH.—If a man counterfeit the king's great or privy his alſo is treaſon. In ſupplement of this, the act of Anne, c. 21, provides, that if any man counterfeits jeſty's ſeals, appointed by the treaty of Union to be nd uſed in Scotland, that the doing thereof ſhall be ed and adjudged to be treaſon. 5th, Counterfeiting the ſeal.

TH.—It is treaſon "if a man counterfeit the king's ey; and if a man bring falſe money into this realm, nterfeit to the money of England, knowing the money e falſe to merchandize, and to make payment with- Gold and ſilver money only are within the ſtatute [b]. eaſon whether the falſe money be uttered in payment ; or if the king's miners alter the ſtandard or alloy ſhed by law. Under the ſecond branch, it is held, 6th, Coin.

and only to amount to a high of riot. Hume, Com. crim. l. ii, c. 26.

[a] 1ſt Burr. 650.
[b] 1 Hawk. P. C. 42.

§ 3. PUBLIC—TREASON. that uttering the falſe money, without importing it, is not within the ſtatute [a].

7th, Killing the judges. *SEVENTH.*—The laſt ſpecies of treaſon, aſcertained by this ſtatute, is, "if a man ſlay the chancellor, treaſurer, or "the king's juſtices of the one bench or the other, juſtices What judges. "in eyre, or juſtices of aſſiſe, and all other juſtices aſſigned "to hear and determine, being in their places doing their "offices." The ſame protection is afforded to the lords of ſeſſion and lords of juſticiary [b]. It extends only to offices therein ſpecified, and therefore not to barons of exchequer But the lord-keeper, and the lords commiſſioner of the great ſeal, ſeem now to be within it by virtue of the ſtatutes ques Eliz. cap. 15 [c].

—NEW TREASONS. SINCE the 1ſt of Mary, cap. 1, which abrogated, wh judge Blackſtone calls the many "new-fangled treaſons "the intervening period, and reduced all treaſons to a "ſtandard of the above ſtatute, there have been add "other treaſons, which may be compriſed under thr "heads; 1, ſuch as relate to papiſts; 2, ſuch as relate "falſifying the coin, or other royal ſignatures; 3, ſuch "are created for the ſecurity of the proteſtant ſucceſſion "the houſe of Hanover."

1*st*, Papiſts. *FIRST.*—The firſt ſpecies relates to papiſts, by ſtat 5 Eliz. c. 1. It is treaſon if a perſon ſhall be twice convi ed of maintaining the pope's juriſdiction within the rea by 13 Eliz. c. 7. It is treaſon to put in uſe any bull or ſtrument of abſolution, or reconciliation, obtained from ſee of Rome [c]. By ſtatute 27 of Eliz. c. 2, if any popi prieſt, born in the dominions of the crown of England, ſh

[a] Hawk. P. C. c. 43.
[b] 7 Anne, c. 21.
[c] Hale, P. C. vol. i, p. 231.
[d] Black. edit. 1800, b. iv, c. 6.
[e] Hawk. vol. i, p. 44.

come over hither from beyond the ſeas, or ſhall tarry here three days, without conforming to the church, he is guilty of high treaſon. And by ſtatute 3 Jac. I, c. 4, if any natural-born ſubject be withdrawn from his allegiance, and reconciled to the pope or ſee of Rome, or any other prince or ſtate, both he, and all ſuch as procure ſuch reconciliation, ſhall incur the guilt of high treaſon. § 2. PUBLIC—NEW TREASONS.

SECOND.—Treaſons relative to the coin. By 1 Mary, ſtatute 2, c. 6, it is treaſon to counterfeit any foreign coin of gold and ſilver that is current in this realm by conſent of the crown, or to forge the ſign manual, privy ſignet, or privy ſeal. By 1 and 2 Philip and Mary, c. 11. It is alſo treaſon to bring into this realm ſuch falſe or counterfeit money being current here, knowing the ſame to be falſe, with intent to utter the ſame in payment [a]. The money muſt be current by the king's proclamation [b]. But now by 37 Geo. III, c. 126, if any perſon ſhall coin, or counterfeit, any kind of foreign gold or ſilver coin, though not current within this realm, he ſhall be guilty of felony, and may be tranſported for ſeven years; and if any perſon knowingly and fraudulently ſhall bring any counterfeit coin into the kingdom, he ſhall be ſubject to the ſame puniſhment. 2d, Coin. Puniſhment where the coin is not of Britiſh currency.

AND if any perſon knowingly utter, or tender in payment, or pay any ſuch counterfeit foreign coin, for the firſt offence he ſhall be impriſoned ſix months, and find ſureties for his good behaviour for ſix more; for the ſecond offence he ſhall be impriſoned two years; and for the third he ſhall be guilty of a capital felony. And if any perſon, without lawful excuſe, ſhall have more than five ſuch counterfeit pieces in his cuſtody, he may be convicted before a juſtice, and forfeit from 40s. to 5l. for each piece; and for failure of payment may be impriſoned three months. Uttering counterfeit coin, how puniſhable. Having in his pocket more than five pieces.

[a] Black. vol. iv, c. 6. [b] Ibid.

§ 3. PUBLIC—NEW TREASONS.

Clipping, &c.

By ſtatute 5 Eliz. c. 11, clipping, waſhing, roundi filing, for wicked gain's ſake, any of the money realm, or other money ſuffered to be current here, ſh adjudged high treaſon; and by ſtatute 18 Eliz. c. 1, "cauſe the ſame law being penal, ought to be take "expounded ſtrictly accordingly to the words thereo "the like offences, not by any equity, to receive th "puniſhment or pains,") the ſame ſpecies of offe therefore deſcribed in other more general words, vi pairing, diminiſhing, falſifying, ſcaling, and lightening made liable to the ſame penalties.

Having implements of coinage.

By ſtatute 8 and 9 W. III, c. 26, made perpetua Anne, c. 25, whoever, without proper authority, ſhall ingly make, or mend, or aſſiſt, in ſo doing, or ſhall be conceal, hide, or knowingly have in his poſſeſſion, a plements of coinage ſpecified in the act, or other to inſtruments proper only for the coinage of money, o convey the ſame out of the king's mint, he, togethe his councellors, procurers, aiders, and abettors, ſh guilty of high treaſon; which is by much the ſevereſt of the coinage law. The ſtatute goes on farther, and that to mark any coin on the edges with letters, or oth in imitation of thoſe uſed in the mint; or to colour, g caſe over, any coin, reſembling the current coin, o round blanks of baſe metal, ſhall be conſtrued high tr But all proſecutions on this act are to be commenced three months after the commiſſion of the offence, excep for making or mending any coining tool or inſtrume for marking money round the edges; which are direct be commenced within ſix months after the offence co ted.

Altering ſhillings to the likeneſs of guineas.

And, laſtly, by ſtatute 15 and 16 Geo. II, c. 28, perſon colours or alters any ſhilling or ſixpence, either ful or counterfeit, to make them reſpectively reſem

guinea or half guinea, or any halfpenny or farthing to make them reſpectively reſemble a ſhilling or ſixpence; this is also high treaſon; but the offender ſhall be pardoned, in caſe (being out of priſon) he diſcovers and convicts two other offenders of the ſame kind. § 3. PUBLIC—NEW TREASONS.

THIRD.—The other ſpecies of high treaſon was created for the ſecurity of the proteſtant ſucceſſion. The ſtatute 1 Anne, ſtatute 2, c. 17, made it high treaſon to deprive or hinder, by any ouvert act, any perſon being the next in ſucceſſion to the crown, according to the limitation of the act of ſettlement, from ſucceeding to the crown. 3d, Proteſtant ſucceſſion. Hindering the next heir from ſucceeding.

AND by ſtatute 6, c. 7, it is high treaſon adviſedly and directly, by writing or printing, to maintain and affirm that any perſon has right to the crown of theſe realms otherwiſe than according to the act of ſettlement; or that the kings of this realm, with the conſent of parliament, are not competent to make laws to bind the crown in the deſcent thereof. To do the ſame thing by adviſed ſpeaking, as preaching or teaching ſubjects, is, by the ſame ſtatutes, puniſhable with the forfeiture of lands, and impriſonment during the king's pleaſure. By writing or printing, by ſpeaking.

THE mode of trial by high treaſon is in the Engliſh form. A bill muſt be found againſt the party by a grand jury of twelve men. The petty jury alſo conſiſts of twelve; and the trial of treaſon is not committed to the court of juſticiary, but made competent to any commiſſion of oyer and terminer, iſſued in favour of ſuch perſons as his majeſty may be pleaſed to appoint. Mode of trial.

SEDITION, according to Mackenzie, "is a commotion of "the people without authority[a]," conſiſting, as Mr. Erſkine expreſſes it, "in raiſing commotions and diſturbances of the —SEDITION. What is it?

[a] Crim. law, part i, tit. 7.

§ 3. PUBLIC— SEDITION.

" peace [a]." But our learned commentator on the d tion of crimes, who treats the ſubject with greater pr than any of his predeceſſors, has more properly deſcr as reaching " all thoſe practices, whether by deed, w " writing, or of whatſoever kind, which are ſuited a " tended to diſturb the tranquillity of the ſtate; f " purpoſe of producing public trouble or commotio " moving his majeſty's ſubjects to the diſlike, reſiſtan " ſubverſion, of the eſtabliſhed government and la " ſettled frame and order of things [b]." According

tumult, is it neceſſary to make ſedition.

definition, the actual exiſtence of any tumult or viol ſo far from being requiſite to conſtitute the crime o tion, that it makes it a crime of a different name an ſcription. Thus if the multitude hath once broke ou open violence, this, according to circumſtances, will

When ſedition becomes treaſon.

amount to the crime of treaſon, or to that of riot which will be noticed afterwards under the general te *mobbing*. If the cauſe be public, or againſt the g ment, it will belong to the former claſs; if private a cal, it will belong to the latter.

UNDER the deſcription already mentioned, muſt ob be included offences of too great variety and ſhape to at to enumerate them. It is ſufficient that the arm of law i to reach the offence under whatever diſguiſe it may cho appear, wherever there is evidence of the ſame depra principle, and reaſon to apprehend the like pernicious Thus the attempting to raiſe diſcontent in the minds majeſty's ſoldiers, and propoſing to them diſloyal and tious toaſts [c]; the printing and publiſhing a pamphlet, traduced the Britiſh government as a ſyſtem of venalit oppreſſion [d]; the uttering ſpeeches, circulating publica

[a] Book iv, tit. 4.

[b] Hume, vol. ii, c. 27.

[c] 8th Jan. 1793, Morton, Anderſon, and Craig.

[d] 18th March 1793, Robert Berry, bookſellers.

and forming associations for the purpose of accomplishing, on their own authority, an alteration of the government [a]; the publishing a hand-bill, which described the king and parliament as in league to enslave the country, and which excited them to combine and take unlawful measures in their own defence [b]; being members of an assembly, which arrogated to itself the character of representatives of inhabitants of Great Britain, and in that capacity took measures for debauching the affections of the people, and defying the legislature: all these have been found, in our own time, by the court of justiciary, to constitute the crime of sedition. § 3. PUBLIC SEDITION.

SEDITION is mentioned in our oldest law book, *Regiam Majestatem*, as a point of *dittay*, and the life and limb of the offender is put in the king's power. But, without travelling through the many sanguinary acts which disgrace our statute book [c], and which are now happily no longer in force, it is sufficient to observe that the punishment is arbitrary, with the exception of life and limb. It may be punished in such manner, as the more or less aggravated circumstances of the case, or danger of the times, may require. In the case of Morton, Robertson, and Berry, &c. the court of justiciary inflicted only a short imprisonment; while they punished Muir, Palmer, and others, with transportation to Botany-bay [d]. Punishment by the Scottish law.

THE proper tribunal for trying this offence is the supreme criminal court; but there is no doubt it is competent also

[a] August 31. 1793, Thomas Muir.

[b] Sept. 13, 1793, Thomas Fyshe Palmer.

[c] James II, 1447, c. 77; James IV, 1491, c. 34; queen Mary, 1563, c. 83; James VI, 1584, c. 131; 1606, c. 17; Cha. II, 1661, c. 4.

[d] A late statute enabled the English judges to inflict this punishment of transportation upon such offences which before had been there punishable only by fine and imprisonment as misdemeanours.

§ 3. PUBLIC— SEDITION.

before the ſheriff, or other judge ordinary; and there doubt that it is competent alſo before the ſeſſions peace, if the crime is unattended with circumſtances gravation ſo as to require a ſevere puniſhment. But t portant juriſdiction of the juſtices in this caſe is ex ſional. The checking and preventing the growth o tion, detecting and counteracting ſuch machinations very firſt, and ſecuring the delinquents for trial befc higher judicatures.

—LEAS- ING MAK- ING.

SEDITION differs from leaſing-making in this, that t ter ſeems to be a verbal injury directed againſt the ki *perſon*; which may be committed, either by ſpreadi ports tending to impeach his right to the crown, as him a papiſt, or baſtard, or aſperſing his moral charac by the falſe invention of ſuch ſtories as may tend to jealouſy or diſlike between the king or any of his cou or ſervants, or other eminent perſon, or by ſpeakin temptuouſly or reproachfully of the king; but all ſuppoſed to proceed out of perſonal diſlike of the whereas ſedition proceeds on a project of diſturbi ſtate. At the ſame time, no doubt, as leaſing-maki leſſening the due reverence of the ſovereign with his may agree with ſedition in its tendency to produce miſchief and commotion of the ſtate, it may often l that the ſame act may be libelled with propriety eithe dition or leaſing-making.

Sedition, by our ancient laws, capital.

No part of our ſtatute-book can more remind us oppreſſions exerciſed in former times, and of the ſ we preſently enjoy, than the ancient enactments which this offence capital. By the ſecond parliament of ou James, anno 1424, cap. 43, it is ordained, "that a "ing-makers, who engender diſcord betwixt the kir "his people, ſhall, wherever they can be found, be "lenged by thoſe who have authority, and forfeit the

§ 3. PUBLIC—LEASING-MAKING.

"and goods to the king." And by the ſixth parliament of James V, anno 1540, cap. 83, it is ſtatuted, "that the "ſame pains ſhall continue to be inflicted upon leaſing-"makers as have been ordained by former parliaments. "From this act, too, it appears that leaſing-making was not "only ſpeaking ill of the king to his ſubjects, but ſpeaking "ill alſo of his ſubjects, 'his lords, barons, and lieges,' to "the king." But theſe ſanguinary ſtatutes were corrected by the act of the ſecond ſeſſion of the firſt parliament of queen Anne, (1703, c. 4,) declaring leaſing-making not to be a capital crime.

Statutes againſt leaſing-makers

"OUR ſovereign lady conſidering, that by the acts of "parliament following, viz. the act James I, parl. 2, c. 43, "intitled, leaſing-makers tines life and goods; act, James "V, parl. 6, c. 83, of leaſing-makers; act, James VI, parl. "8, c. 134, anent ſlanderers of the king, his progenitors, "and realm; act, James VI, parl. 10, c. 17, intitled, au-"thors of ſlanderous papers and writs ſhould be puniſhed "to the death; act, James VI, parl. 14, c. 205, anent leaſ-"ing-makers and authors of ſlanders; and act, James VI, "parl. 20, c. 9, intitled, act againſt ſlanderous ſpeeches and "libels; the crimes herein mentioned are made capital, and "puniſhable by death and confiſcation; and that the ſaid "laws have been liable to ſtretches, and that in reſpect of "their generality, and the various conſtructions which the "ſame may admit, they may be, as to the foreſaid capital "puniſhment, of dangerous conſequence, doth, therefore, "with advice and conſent of the eſtates of parliament, "abrogate and diſcharge, in all time coming, the foreſaid "ſanction and pain of death and confiſcation, contained in "the ſaid acts; and ſtatutes and ordains, that the puniſh-"ment of the crimes therein mentioned ſhall for hereafter "only be arbitrary, according to the demerit of the tranſ-"greſſion, that is, by fining, impriſonment, or baniſhment;

Act of Q. Anne, declaring leaſing-making not a capital crime.

Act of Q. Anne, declaring the puniſhment of leaſing-making arbitrary.

§ 3. PUBLIC—LEASING-MAKING.

" or if the party offender be poor, and not able to pay a " fine, then to be puniſhed in his body (life and limb always " preſerved.")

—TUMULTUOUS PETITIONING

NEXT may be noticed the offence of tumultuous petitioning, which was carried to an enormous height in the times preceding the grand rebellion. Wherefore, by ſtatute 13 Car. II, ſtat. 1, c. 5, it is enacted, that not more than twenty names ſhall be ſigned to any petition to the king, or either houſe of parliament, for any alteration of matter eſtabliſhed by law in church or ſtate, unleſs the contents thereof be previouſly approved in the country by three juſtices, or the majority of the grand jury at the aſſizes or quarter-ſeſſions; and in London, by the lord mayor, aldermen, and common council; and that no petition ſhall be delivered by a company of more than ten perſons, on pain, in either caſe, of incurring a penalty not exceeding 100l. and three months impriſonment.

—SEDITIOUS ASSEMBLIES.

THE right of aſſembling to conſult concerning petitions to the king, though evidently implied by the declaration in the claim of rights, that it is the right of ſubjects to petition the king, and that all impriſonments and proſecutions on that account are contrary to law, has been more than once abridged by the legiſlature. Particularly by the 36 Geo. III, c. 8, (originally to endure only for three years, afterwards revived by act 41 Geo. III, c. 30, to continue for ſix weeks after the then next ſeſſion of parliament) it was enacted, that no meeting, exceeding the number of fifty perſons, ſhall be holden for the purpoſe of any petition or remonſtrance to the king or either houſe of parliament, for the alteration of any matters eſtabliſhed in church or ſtate, or for the purpoſe of deliberating upon any grievance in the ſame, unleſs notice of ſuch a meeting be given in the names of ſeven houſeholders in ſome public newſpaper

ive days at the leaſt before the meeting; and every publiſher of a newſpaper, who advertiſes ſuch a meeting without ſuch a notice as is particularly deſcribed in the ſtatute, ſhould forfeit the ſum of 50l. Or, inſtead of being inſerted in a newſpaper, might be ſent five days before the meeting to the clerk of the peace of the county, who ſhould immediately tranſmit a copy of it to three juſtices of the peace reſident within the county. But all meetings, without ſuch previous notice, conſiſting of more than fifty perſons, aſſembled for the aforeſaid purpoſes, ſhould be unlawful aſſemblies: and if, after a proclamation made by a magiſtrate to diſperſe, more than twelve continue together, they were guilty of a capital felony. And if in a meeting held purſuant to notice, it ſhould either be propoſed in the notice, or any one ſhould propoſe at the meeting, to alter, without authority of parliament, any matter eſtabliſhed by law, or make any propoſition to excite hatred againſt the king or the conſtitution, then one or more juſtices might order the aſſembly to diſperſe, and take the perſons who made ſuch propoſitions into cuſtody. And every perſon obſtructing any magiſtrate in the diſcharge of his duty in enforcing the directions of this ſtatute, ſhould ſuffer death without benefit of clergy. § 3. PUBLIC SEDITIOUS ASSEMBLIES.

THE magiſtrates in Scotland had by this act the ſame authority as juſtices of the peace in England. And if any perſon opened a houſe for reading lectures upon public grievances, or the laws and government of theſe kingdoms, to which perſons were admitted for money, ſuch houſe, unleſs previouſly licenced, ſhould be conſidered a diſorderly houſe; and the perſon by whom it is opened ſhould forfeit 100l.; and all other perſons concerned, as the preſident or chairman at ſuch lectures, or all who paid or received money for admiſſion, or delivered out tickets, ſhould alſo forfeit the ſame ſum. But two juſtices might grant a licence to read ſuch lectures, to continue in force for one year,

§ 3. PUBLIC—SEDITIOUS ASSEMBLIES.

unleſs ſooner revoked by the juſtices at the quarter-ſe ſions. But this ſtatute did not extend to lectures deliver in the univerſities, or to diſcourſes given by ſchool-maſte to their ſcholars. Proſecutions and actions under this ſt tute to be commenced within three months after the o fence.

THIS act, with the continuation of it, ſeems to have expir at the period laſt mentioned: but another very important ſta tute was paſſed againſt ſeditious ſocieties, 39 Geo. III, c. 7 the preamble of which ſtates: "Whereas a traitorous conſpi "acy has long been carried on, in conjunction with the pe "ſons from time to time exerciſing the powers of governmen "in France, to overturn the laws, conſtitution, and govern "ment, and every exiſting eſtabliſhment, civil and eccleſi "aſtical, both in Great Britain and Ireland, and to diſſolv "the connection between the two kingdoms, ſo neceſſar "to the ſecurity and proſperity of both: and whereas, i "purſuance of ſuch deſign, and in order to carry the ſam "into effect, divers ſocieties have been of late years inſti "tuted in this kingdom, and in the kingdom of Ireland, o "a new and dangerous nature, inconſiſtent with public tra "quillity, and with the exiſtence of regular government "particularly certain ſocieties calling themſelves Societie "of United Engliſhmen, United Scotchmen, United Br "tons, United Iriſhmen, and the London Correſponding "Society: and whereas the members of many of ſuch ſ "cieties have taken unlawful oaths and engagements of f "delity and ſecrecy, and uſed ſecret ſigns, and appointe "committees, ſecretaries, and other officers, in a ſecr "manner; and many of ſuch ſocieties are compoſed of di "ferent diviſions, branches, or parts, which communica "with each other by ſecretaries, delegates, or otherwiſ "and by means thereof maintain an influence over lar "bodies of men, and delude many ignorant and unwa

Preamble.

United Engliſhmen and others.

§ 3. PUBLIC—SEDITIOUS ASSEMBLIES.

" perſons into the commiſſion of acts highly criminal;" it therefore enacts, that all theſe and other correſponding ſocieties ſhould be utterly ſuppreſſed and prohibited, as being unlawful combinations and confederacies.

Deſcription

AND alſo every ſociety, of which the members ſhall, according to the rules of the ſociety, be required to take an illegal oath, or an oath not authoriſed by law, or ſhall ſubſcribe or aſſent to any teſt or declaration not required by law, or where the names of the members, or the committees or preſidents choſen are not known to the ſociety at large; and every ſociety, which ſhall conſiſt of different parts, either acting ſeparately, or having ſeparate preſidents or other officers, ſhall be deemed unlawful combinations and confederacies; and every perſon who ſhall become a member of ſuch a ſociety, or who ſhall correſpond with them, or ſhall aid or ſupport them with money or otherwiſe, ſhall be guilty of an unlawful combination and confederacy.

Exceptions.

THIS does not extend to a declaration ſubſcribed to by a ſociety, which declaration ſhall be approved by two juſtices, and afterwards confirmed at the quarter ſeſſions, nor to perſons who ſhall ceaſe to act as members of ſuch ſocieties after the paſſing of the act, nor to eſtabliſhed lodges of free maſons. But two members ſhall certify, and upon oath, that their ſociety has been uſually held as a lodge of free maſons, in conformity to the rules of free maſons in this kingdom; which certificate, and alſo an account of its place and times of meeting, and the names of all its members, ſhall be regiſtered with the clerk of the peace; and the juſtices at the ſeſſions, upon complaint made to them upon oath by any credible perſon, that ſuch ſociety is likely to be injurious to the public peace and good order, may direct that the meetings of ſuch lodge be diſcontinued.

Free maſons, &c.

Penalty.

PERSONS offending againſt this ſtatute may be proceeded

§ 3. PUBLIC—SEDITIOUS ASSEMBLIES.

againſt either in a ſummary way before one juſtice, or more, who may either fine the offender in 20l. or impriſon him three kalendar months, or they may be proſecuted by indictment; and upon conviction the court may tranſport for ſeven years, or impriſon for any time not exceeding two years.

Juſtices may mitigate.

THE juſtices in a ſummary conviction may mitigate the puniſhment to one third. If any perſon ſhall permit the meeting of any illegal ſociety in his houſe, he ſhall forfeit 5l. for the firſt offence, and for the ſecond he ſhall be puniſhable as a member. And two juſtices, upon evidence on oath that any meeting has been held for a ſeditious purpoſe in a public houſe, may declare the licenſe forfeited, and from the day of ſuch declaration the licenſe is void and determined, and the owner of the houſe will be afterwards ſubject to penalties accordingly.

Diſorderly houſes.

AND becauſe many places were open for lectures and debates of a ſeditious and immoral nature, and other places uſed for ſeditious and immoral purpoſes, under pretence of reading books, pamphlets, newſpapers, or other publications, it is enacted, that all ſuch places where, under any pretence, money ſhall be received for admiſſion, ſhall be conſidered as diſorderly houſes, under the 36 Geo. III, c. 8[a], unleſs they are licenſed for any time not more than one year by two juſtices; which licence may be revoked by the juſtices at the quarter ſeſſions. Every alehouſe ſhall be deemed licenſed for reading publications; but upon evidence that publications of a ſeditious or immoral nature are uſually diſtributed in order to be read there, two juſtices may declare the licenſe void.

THE act then ſtates, that theſe ſocieties had publiſhed, in great quantities, papers of an irreligious, treaſonable, and ſedi-

[a] See *ante*,

tious nature, and had diſperſed them among the lower claſſes of the community, either gratis, or at very low prices, and with an activity and profuſion beyond all former example, and that it was highly important to the public peace that it ſhould in future be known by whom any ſuch papers have been printed; it therefore enacts, that every perſon having any printing preſs, or types for printing, and every perſon carrying on the buſineſs of a letter founder, or maker or ſeller of types for printing, or of printing preſſes, ſhall give notice thereof to the clerk of the peace, who ſhall tranſmit a copy to one of his majeſty's principal ſecretaries of ſtate: perſons omitting to give the notice required ſhall forfeit 20l. § 3. PUBLIC—SEDITIOUS ASSEMBLIES. Printing preſſes. Penalty.

AND every perſon who ſhall ſell types or printing preſſes ſhall keep an account of all perſons to whom they ſhall be ſold, and ſhall produce ſuch an account at any time to any juſtice of the peace requiring the ſame, on penalty of 20l. Sale of types, &c. Penalty.

THE printer ſhall print upon the front of every paper, which is printed on one ſide only, and upon the firſt and laſt leaves of every publication, which contains more than one leaf, his name and place of abode, and in caſe of omiſſion ſhall forfeit for every copy publiſhed 20l.; and every perſon, who prints for profit, ſhall keep one copy of every paper ſo printed, on which ſhall be written or printed the name and place of abode of the perſon by whom ſuch printer ſhall be employed, and ſhall produce the ſame to any juſtice of the peace who, within the ſpace of ſix months, ſhall require to ſee the ſame, and upon neglect or refuſal ſhall forfeit 20l. Name and abode of the printer. Penalty.

ANY perſon may apprehend thoſe who are publiſhing papers without the name and abode of the printer, and may convey them, or deliver them to a conſtable to convey to a magiſtrate to be examined: and a peace officer, by a war- Apprehending delinquents.

§ 3. PUBLIC—SEDITIOUS ASSEMBLIES.

rant from a juſtice of the peace, may enter any houſe or room to ſearch for any printing preſs or types ſuſpected to be kept or uſed without the notice required by the act, and to ſeize and carry them away, together with all printed papers found in ſuch houſe or room.

DURING the ſame troubleſome times another ſtatute was paſſed, which muſt alſo be noticed.

Act for his majeſty's ſafety.

IN conſequence of inſults and outrages which had been publicly offered to the perſon of the king, and of the great multitude of ſeditious publications aiming at the overthrow of the government of this country, and alſo of the frequent ſeditious meetings and aſſemblies held at that time to deſtroy the ſecurity and tranquillity of the public, an act of parliament was paſſed in the 36th year of his preſent majeſty's reign, intitled, "An act for the ſafety and preſervation of "his majeſty's perſon and government againſt treaſonable "and ſeditious practices and attempts."

Traitors.

BY this act it was enacted, that if any perſon ſhould compaſs, imagine, or intend death, deſtruction, or any bodily harm to the perſon of the king, or to depoſe him, or to levy war, in order by force to compel him to change his meaſures or counſels, or to overawe either houſe of parliament or to excite an invaſion of any of his majeſty's dominions and ſhall expreſs and declare ſuch intentions, by printing writing, or any overt act, he ſhall ſuffer death as a traitor.

Capital puniſhment.

AND if any one by writing, printing, preaching, or other ſpeaking, ſhall uſe any words or ſentences to incite the people to hatred and contempt of the king, or of the government and conſtitution of this realm, he ſhall incur the puniſhment of a high miſdemeanor; that is, fine, impriſonment, and pillory: and for a ſecond offence he is ſubject to a ſimilar puniſhment, or tranſportation for ſeven years, at the diſcretion of the court.

High miſdemeanour.

Puniſhment

§ 3. PUBLIC—SEDITIOUS ASSEMBLIES.

BUT a proſecution for a miſdemeanor under this act muſt be brought within ſix months. And this ſtatute ſhall not affect any proſecution for the ſame crimes by the common law, unleſs a proſecution be previouſly commenced under the ſtatute. The firſt part of this ſtatute is to continue in force until the end of the next ſeſſion of parliament after the demiſe of the crown [a]. The ſecond part of it was limited to England, and to three years after paſſing the act, and the end of the then next ſeſſion of parliament.

Endurance of the act.

§ 4. PRIVATE—RIOT ACT.

THE other claſs of breaches of the peace comprehends thoſe, which are in their object private or local. We ſhall begin with that deſcription of this offence, which is made capital by ſtatute. I do not allude to the ſtatutes of James II [b] and IV [c], queen Mary [d], and James VI [e], which, as they were originally intended, ſo for upwards of a century paſt have been underſtood to relate only to regular leagues or bonds, or confederacies for raiſing men againſt the government, under pretence of public grievances, and have not been ſtrained, as they were on ſome former occaſions, to be the foundation of capital puniſhment in the caſe of occaſional tumults on account of local or private incidents; but I mean the capital offence introduced by the 1 Geo. I, c. 5, commonly called the riot act [f], viz. the riotous aſſembling of twelve perſons, or more, and not diſperſing upon proclamation.

What conſtitutes a riot under the ſtatute.

THIS ſtatute enacts generally, that if any twelve perſons are unlawfully aſſembled to the diſturbance of the peace, and any one juſtice of the peace, ſheriff, under ſheriff, or head officer, of a town, ſhall command them to diſperſe, if

Number of rioters.

Order to diſperſe.

[a] 36 Geo. III, c. 7.
[b] 1457, c. 77.
[c] 1491, c. 34.
[d] 1563, c. 83.
[e] 1606, c. 17.
[f] Appendix I, No. 19.

§ 4. PRIVATE—RIOT ACT.

they contemn his orders, and continue for one hour afterwards, the offenders ſhall ſuffer death.

Form of proclamation.

THE form of making proclamation is contained in the act; but it is added, "or in words like in effect;" any command, therefore, to diſperſe in the king's name, if diſobeyed, conſtitutes this capital offence. But the proclamation muſt be made by a perſon properly authoriſed, viz. a juſtice of peace or magiſtrate. A conſtable, or peace officer, is not intruſted with this power.

Who may make proclamation?

What juſtifies an order to diſperſe.

IT is a ſufficient ground for the magiſtrate to command them to diſperſe, that "they are aſſembled with ſuch circumſtances of force, agitation, and diſorder, as are alarming to the lieges, and amount to a diſturbance of the public peace, though they have not proceeded to any felonious attack upon property or perſon[a]." On the other hand, if the rioters proceed to any invaſion of property or perſon, they may be forcibly reſiſted, ſuppreſſed, and taken on the ſpot by the magiſtrate or conſtables, or individuals invaded, or by their aſſiſtants[b], without reading the act, or waiting any interval of time.

If there be actual violence.

Proclamation oppoſed.

FARTHER, if the reading of the proclamation be by force oppoſed, or the reader be in any manner willfully hindered from the reading of it, the oppoſers and hinderers ſhall ſuffer death; and all perſons to whom ſuch proclamation *ought to have been made*, knowing of ſuch hinderance, and not diſperſing, ſhall alſo ſuffer death.

If any of the mob be killed.

THE act indemnifies the peace officers and their aſſiſtants, if they kill any of the mob in endeavouring to ſuppreſs ſuch riot.

[a] Hume, vol. ii, p. 267.

[b] Charge to the jury in the great riot 1780, by the lord chief-juſtice of the common pleas, (then lord Loughborough, afterwards lord chancellor, and now lord Roſslyn.)

§ 4. PRIVATE—RIOT ACT.

AND by a ſubſequent clauſe, if any perſon ſo riotouſly aſſembled, begin, even before proclamation, to pull down any church, chapel, meeting-houſe, dwelling-houſe, or out-houſes, they ſhall ſuffer death. Tearing down the partitions; or the pannelling of the apartments, or the ſlates or lead from the roof, was found to be "a beginning to demo-"liſh," under this clauſe of the act; but neither the deſtruction of exterior ornaments of the houſe and gardens, as vaſes, ſtatues, &c. nor tearing down doors or window-ſaſhes, in order to get into the houſe [a], conſtitutes this crime.

Beginning to demoliſh.

BY another clauſe, it is provided, that if "any ſuch "church or chapel," (that is, any place for religious worſhip tolerated by law, and where the royal family are prayed for in expreſs words) "or any ſuch dwelling-houſe, barn, ſtable, "or other outhouſe, ſhall be demoliſhed, or pulled down, "wholly or in part, by any perſons ſo unlawfully, riotouſly, "and tumultouſly, aſſembled," damages may be recovered "by ſummar action at the inſtance of the party aggrieved, "his other heirs or executors, againſt the county, ſtewart-"ry, city, or burrough, reſpectively, where ſuch diſorders "ſhall happen, the magiſtrates being ſummoned in the or-"dinary form, and the ſeveral counties and ſtewartries be-"ing called by edictal citation at the market-croſs of the "head burrough of ſuch county or ſtewartry reſpectively,

Damages due to the ſufferer.

[a] Sept. 1725, Darrachs. Interlocutor, "find the pannels, or any of "them, their beginning to demoliſh "the houſe libelled, by breaking or "pulling down with force, the doors "and windows after the ſaid pan-"nels had entered the ſaid houſe, or "being art and partof the ſame, re-"levant to infer the pain of death, "and confiſcation of moveables; and "find the pannels, or any of them, "that they did, at the place and "time libelled, with forge-hammers "or otherwiſe, knock down the par-"titions in the houſe, or part of the "ſame, or pull down the linings or "parts thereof, or broke down the "roof or part thereof, or pulled away "or deſtroyed the ſclates or lead, or "were art or part of the ſame, or "any of the ſaid facts, relevant to in-"fer the pain of death and confiſca-"tion of moveables."

§ 4. PRIVATE— RIOT ACT.

" and that in general without mentioning their names and " designations."

Are there damages for furniture and goods deſtroyed?

IT has been made a queſtion, whether damages could be obtained under this ſtatute for loſs of furniture or other effects, or only for the damage ſuſtained by pulling down the houſes. In the only caſe where this point came under the cognizance of the court of ſeſſion, it was found that " no " action lay on the ſtatute for damage ariſing from carrying " off grain or other goods out of any houſe or outhouſe, " but only for the damage done by pulling down ſuch " houſe [a]," &c. But ſince that period the Engliſh judges have interpreted this ſtatutory indemnification more liberally. It was determined, after the riots in 1780, that the owners of houſes might recover damages alſo for the deſtruction of furniture, or for any injury to their property done at the ſame time that the buildings were demoliſhed, or were in part pulled down [b].

MOBBING.

LET us now ſee how this claſs of offences ſtands at common law.

What is it?

MOBBING, or the *tumultuous convocation of the lieges*, is the general appellation under which our practice includes the ſeveral degrees and ſtages of the diſorder, that are known in England by the names of riot, rout, and unlawful aſſembly [c].

Unlawful aſſembly.

AN unlawful aſſembly is when three or more perſons aſſemble to do an unlawful act, as to pull down incloſures,

Rout.

to deſtroy a warren, or the game therein; and diſperſe without doing it, or making any motion towards it. A rout is,

[a] Jan. 28, 1743, colonel Straiton againſt the magiſtrates and town-council of Montroſe. Clerk Home. No. 224.

[b] Doug. 673. Chriſtian's Blackſtone, note i, b. 4, c. 11, p. 143.

[c] Hume, vol. ii, p. 226.

§ 4. PRIVATE—MOBBING.

where three or more meet to do an unlawful act upon a common quarrel; as forcibly breaking down fences, upon a right claimed of common, or of way, and make some advances towards it. A riot is where three or more actually do an unlawful act of violence, either with or without a common cause, or quarrel; as, if they beat a man, or hunt and kill game in another's park, chase, warren, or liberty, or do any other unlawful act with force and violence; or even do a lawful act, as removing a nuisance, in a violent and tumultuous manner.

Riot.

What number necessary.

By the English law, three or more persons are requisite to constitute a riot. If the jury therefore acquit all but two, and find them guilty, the verdict is void, unless they be indicted with other rioters unknown [a]. But the lowest number, which with us is necessary to make a mob, seems rather to be "left open to be decided upon the circumstances of "each case according to the aspect and purpose of the meeting, and the nature and degree of the excesses to which "they have proceeded; the higher these are, the less their "number that will be necessary to bring their offence within the notion of a mob; as, on the other hand, inferior "outrages will sustain the charge, if they are the act of a "great host and multitude, whereof the very convocation "is itself a terror and subject of alarm [b]."

It supposes a combination.

It is essential to this crime that the persons be *assembled* or *combined* for the purpose. Thus, if a number of persons, being met together at a fair, or market, or on any other lawful and innocent occasion, happen suddenly to quarrel, they are not guilty of a riot, but of an affray only; of which none are guilty but those who actually do the violent acts, because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unex-

[a] 2 Hawk. 441. Burn, tit. Riot. [b] Hume, vol. ii, c. 16.

§ 4. PRIVATE MOBBING.

pectedly, without any previous intention concerni but there may be, and often is, a ſubſtantial and ſ though ſudden and tumultuary conſent on ſuch o and among perſons who at meeting had no ſettled of miſchief [b]. If perſons innocently aſſembled ha terwards to differ, and forming themſelves into parti promiſes of mutual aſſiſtance, commit violence, th guilty of a riot from the time of their confederati ther, as if they had met at firſt on ſuch a deſign [c].

Object muſt be private.

IT ſeems agreed, that the injury or grievance cor of, and intended to be revenged or remedied by ſuc ſembly, muſt relate to ſome private quarrel only; a cloſing of lands, in which the inhabitants of a town right of common; or gaining the poſſeſſion of tei the title whereof is in diſpute; or ſuch like matter ing to the intereſt or diſputes of particular perſons, way concerning the public; for wherever the inte ſuch an aſſembly is to redreſs public grievances, as down incloſures in general, or reform religion, the high treaſon [d].

Muſt there be force.

IT ſeems to be clearly agreed, that in every ri muſt be ſome ſuch circumſtance, either of actual violence, or at leaſt of an apparent tendency there naturally apt to ſtrike a terror into the people; as t of armour, threatening ſpeeches, or turbulent geſtu every ſuch offence muſt be laid to be done to the t the people; whence it clearly follows, that aſſem feſtival times, or meetings for exerciſe of common diverſions, as bull-baiting, or wreſtling, are not riote

IN like manner, it is poſſible for a number of pe

[a] Burn, ibid.
[b] Hume, vol. ii, p. 231.
[c] 1 Hawk. 156. Burn, ibid.
[d] 1 Hawk. 157. Burn, § 1.
[e] 1 Hawk. 157. Burn.

§ 4. PRIVATE MOBBING.

ſemble together with an intention to execute a wrongful t, and alſo actually to perform their intended enterpriſe, hout being rioters. If one, in order to carry away a ece of timber, or any other thing to which he pretends a ght, aſſemble no greater number of aſſiſtants than are need- l for ſuch purpoſe; this, except there be threatening words ed, or other diſturbance of the peace, will not conſtitute riot, although another man may have better right to the ing ſo carried away, and this act therefore be wrong and lawful [a].

MUCH more may any perſon in a peaceable manner aſ- mble a meet company to do any lawful thing. Thus, accord- g to the Engliſh lawyers, every private man may, in a peace- ble manner, aſſemble a meet company, with neceſſary ols, and may remove, pull, or caſt down, any nuiſance hich threaten to be prejudicial to his houſe or property; r which purpoſe, it is farther ſaid, if neceſſary, he may ter into another man's ground. Thus a man erected a ar croſs a common river, where people have a common ſage with their boats, and divers did aſſemble with ſpades, ws of iron, and other things neceſſary to remove the ſaid ar, and make a trench in his land that did erect the wear turn the water, ſo as they might the better take up the d wear; and they did remove the ſame nuiſance: this was ld to be neither any forcible entry, nor yet any riot [b].

BUT if, in removing any ſuch nuiſance, the perſons ſo aſ- mbled ſhall uſe any threatening words, (as to ſay they will it, though they die for it, or ſuch like words) or ſhall uſe y other behaviour, in apparent diſturbance of the peace, en it ſeemeth to be a riot; and therefore, where there is uſe to remove any ſuch nuiſance, or to do any like act, it the ſafeſt not to aſſemble any multitude of people, but

[a] Dalt. c. 137. 1 Hawk. 157. [b] Dalt. c. 137.

§ 4. PRIVATE MOBBING.

only to ſend one or two perſons, or, if a greater number, yet no more than are needful, and only with meet tools to remove, pull, or caſt down, the ſame; and that ſuch perſons tend their buſineſs only without diſturbance of the peace, or threatening ſpeeches. But in all ſuch caſes it ſeems more agreeable to the ſpirit of our law, and every way more expedient for the private individual, inſtead of redreſſing the grievance himſelf, to apply to the judge ordinary [a].

IT has been generally held, that it is no way material, whether the act intended to be done by ſuch an aſſembly be in itſelf lawful or unlawful; whence it follows, that if a number of perſons aſſiſt a man to make a forcible entry into lands, to which one of them has a good right of entry; or in a violent and tumultuous manner join together in removing a nuiſance, or other thing which may lawfully be done in a peaceable manner; or even if a meſſenger, employed to eject from land or houſes, or other officer intitled to command the aſſiſtance of the neighbourhood, ſhall, under the cloak of pretended fear, or the conceit of a vain and groundleſs fear, levy, and carry along with him, a great hoſt of armed and diſorderly people, who, without waiting to know their reception, tumultuouſly ſet to work, and drive off the cattle, break open the houſes, and alarm and inſult the inhabitants [b]; theſe are properly rioters; as if the act intended to be done by them were never ſo unlawful [c].

Requiſite degree of violence.

IT is certain the aſſembly becomes a mob, by deſtroying, rifling, or in any manner of way damaging, ſeizing, or invading, the property either of individuals or the public; by any manner of injury done to the perſons of individuals; or by invaſion, ſearch, or purſuit of, them, with intent to abuſe, confine, or put them in fear. Likewiſe, by violently

[a] Idem.

[b] Hume, vol. ii, p. 229.

[c] 1 Hawk. 138. Burn, ibid.

§ 4. PRIVATE MOBBING.

conſtraining, or intimidating, any one to act contrary to his intereſt, duty, or inclination; as, for inſtance, to ſell grain to the invaders at their own price; to refuſe working at the ordinary rate of labour; to give orders for the releaſe of priſoners, or the like. It would be tedious to rehearſe the many judgments to this purpoſe, which appear in the record [a].

ALTHOUGH the aſſembly have not proceeded to acts of force or outrage, yet if once, in any way, they have plainly diſcovered their purpoſe of ſome violent enterpriſe, and have made a movement, or taken any meaſure towards immediate execution of it; this, too, in the underſtanding of law, amounts to an act of mobbing. If, for inſtance, a multitude aſſemble in the ſtreets of a borough, and take the road, in a body, to a certain mill, with the declared purpoſe of ſeizing the miller's grain; although, owing to panic, or to intelligence, that a force is provided againſt them, they ſhould diſperſe by the way, and without doing harm to property or perſon; ſtill they are guilty of a riot, becauſe of the great commotion and breach of the public peace; as well as that their malice has taken a determinate courſe, by which the individual is put in fear, and ſome advance is made in the purſuit of the particular object [b].

Mere aſſembling.

OUR term of mobbing, or convocation of the lieges, as already mentioned, reaches even the bare act of being tumultuouſly aſſembled for a violent purpoſe, though no farther movement be made toward its execution. If a great riſt of people aſſemble upon the ſtreets of a borough, by beat of drum, and with ſomething hoiſted by way of ſtandard, and continue to parade there for a length of time, in contempt of the peace-officers; providing themſelves alſo with weapons, increaſing their numbers, communicating by

[a] Hume, ibid. [b] Ibid.

§ 4. PRIVATE MOBBING.

a watch-word, making declaration of ſome violent purpoſe, and with loud clamours, and angry ſpeeches and geſtures, deterring all from interference with them; this of itſelf makes a mob, independently of the appearance of any magiſtrate to warn them by reading the riot act. For though no farther outrage enſue, at leaſt this great harm is done, that the peace of the neighbourhood is broken; the individuals are alarmed, who know themſelves to be the objects of theſe preparations; and all the idle and licentious are put in motion in the hope of farther miſchief.

THIS crime is not of the ſame ſimple nature with moſt other offences, but often conſiſts of a ſucceſſion of parts, which are performed by different perſons, and on ſeveral occaſions. Aſſiſtance, therefore, is not held to conſiſt excluſively in the lending of hands to do the acts of violence which are perpetrated, but equally in every other proceeding, which occaſions, facilitates, encourages, or in anywiſe contributes, to promote the common enterpriſe; ſo that he who beats a drum to convocate the rioters, or who reviles the magiſtrate that comes to diſperſe them, or who goes among the multitude and exhorts them to perſiſt, or diſtributes liquor or money to them, to encourge them, is doubtleſs art and part of all the outrages of which they are guilty at that time. For this ſort of heartening and countenance as ſubſtantially forwards the enterpriſe upon the whole, as the aid of hands or force of body in the execution of their unlawful doings.

Art and part.

INDEED, it may be a queſtion, whether he is not art and part of their offence purely by his preſence, although no circumſtance of activity or co-operation be proved againſt him. And this will depend upon the *animus*, or purpoſe, with which he mingles in the aſſembly: in judging whereof, all the circumſtances of his ſituation will of courſe be weighed, and a different deciſion be given, according,

§ 4. PRIVATE-MOBBING.

a the whole evidence in the caſe, his preſence ſhall to have been accidental only, or owing to indiſcre- r with a purpoſe to countenance and abet the un- doings. Thus in the ſtreets of a borough, a per- y for a ſhort time be found in a mob, either inno- or at leaſt excuſably; being perhaps impeded by i his paſſage, or having ſtopped for a while to look at roceedings, or to inquire what they are about; and he ſhould even follow them for a ſhort way, and in the rear of the multitude, it would be ſevere to e this into an acceſſion, which may be mere heedleſſ- idle curioſity. But if a man is found in the throng s face blacked, or in woman's apparel, or with a ſhirt s coat, or if it be proved that he uſed the watch-word rioters, or that he wore in his hat the badge of the of the cauſe for that day; theſe circumſtances, or e length of time that he has continued in the mob, ength of way he has gone along with them, all ſhew ntion. If, for inſtance, at midnight, when he ought ith his family, and in bed, a mechanic, or working s found in a mob at the diſtance of miles from his and is proved to have accompanied them from place e, and on all thoſe occaſions to have been in the of them, and without any pretence of lawful buſineſs part of the country, in ſuch caſes preſence is a law- und of conviction. Indeed, although the individual t have given aſſiſtance of deed, word, or geſture, in cutive part of the buſineſs, yet his preſence is itſelf a iſtance; ſince it adds to their number confidence and it force, and to the attendant terror and alarm, which ir engines for execution of their lawleſs project [a].

: common law of Scotland has not, in this particular, d the civil law, by which this offence was capitally

[a] Hume, vol. ii, c. 16.

§ 4. PRIVATE MOBBING. puniſhable in ſome aggravated caſes; as the breaking dwelling-houſe with offenſive weapons, and rifling i *quidem in turba cum telo fecerint* [a].

Punishment THE puniſhment of mobbing is arbitrary, unleſs ſo it is capital under the riot act. But ſuppoſe the mob been guilty of robbery, houſe-breaking, fire-raiſing, or other crime in itſelf capital, is the individual impri for trial intitled to bail or not? Our law, in this cular alſo, deviates from the Roman law, by which ſu fences, though committed in a mob, were capitally p able. But as indiſcretion, or the heat of the moment inſnare perſons in a mob who are not habitually profligat in the courſe of forming ſeparate projects of violence or der for themſelves, our cuſtom therefore "interpoſes t "the life of the rioter, how great ſoever the exceſſes a "property or perſon which have been committed, i "libel is laid at common law, for the crime of mobbi "convocation of the lieges, and not for any higher or "ſpecial denomination of crime [b]."

[a] Ff. ad leg. Jul. de vi publica.

[b] Hume, vol. ii, p. 247. Mr. Hume obſerves, that a ſtrong evidence of this rule is to be found in the trials that enſued upon the great tumult at Glaſgow, (commonly called Shawfield's mob) which happened on occaſion of the paſſing of the malt tax. In the caſe of James and William Darrach, the lords found "the pannels at the time and place libelled, "that their aſſembling themſelves "tumultuouſly or riotouſly, or invading, or violently breaking, into "the houſe libelled, or the carrying "away or breaking or deſtroying "any of the goods or furniture "thereof, or their being art and part "of the ſame, or any of the acts *ſeperatim* relevant to infer a "trary puniſhment" (here fo clauſe on the riot act); "an "the breaking and defacing "toes, or other ornaments "houſe or gardens, relevant "an arbitrary puniſhment; a "that the pannels, or any o "at the time and place libell "faulted or invaded the guar "cially with ſtones or baton "fiſting of his majeſty's fo "being art and part thereof, r "to infer an arbitrary puniſ "and finds that the pannels, "time and place libelled, aſſ "themſelves in arms, relevan "fer an arbitrary puniſhm Sept. 30, 1725.

§ 4. PRIVATE AFFRAY.

THOSE tumultuous meetings, and quarrels and fightings which take place without any previous communication for mischief, are the proper subject of cognizance to justices of peace and inferior judges; being summarily punishable by fine, imprisonment, and security for good behaviour. Such are termed in English law an affray, which is not a technical word of Scottish law, unless so far as it occurs in the general statutes; but "by the 6th act, c. 5, of queen Anne, the justices of peace in Scotland, besides the powers and authorities vested in them by the laws of Scotland, are further authorized to exercise whatever doth appertain to the office of a justice of peace by the laws of England for the preservation of the public peace, though the methods of trial and judgment shall be according to the laws and customs of Scotland." "I have, therefore," observes lord Gardenstone, "no doubt that the whole of this title in the English law is adopted into our law by authority of the above statute; I therefore assume Mr. Burns' chapter upon this subject, as it appears to me to be very accurate and very complete [a]." Upon his lordship's authority I will make the same use of Dr. Burn, with such occasional alteration in his language as may appear necessary to render the accurate author useful and intelligible to Scottish justices.

AN affray, or fray, is a public offence, to the terror of the king's subjects. It is so called, (according to lord Coke) because it affrighteth and maketh men afraid [b].

What is it?

THERE may, therefore, be an assault, which will not amount to an affray; thus, if it happens in a private place, out of the hearing or seeing of any, except the parties concerned, it cannot be said to be to the terror of the people [c].

[a] MS. v. Affray.
[b] 3 Inst. p. 158.
[c] 1 Hawk. p. 134.

§ 4. PRIVATE —AFFRAY.

MERE words, however quarrelſome or threatening, do not, it is ſaid, amount to an affray; nor can one juſtify laying his hands on thoſe who ſhall barely quarrel with angry words without coming to blows; yet it ſeems that the conſtable may, at the requeſt of the party threatened, carry the perſon who threatens to beat him before a juſtice, in order to find ſureties [a].

By mere words?

BUT although no bare words, in the judgment of law, carry in them ſo much terror as to amount to an affray, yet it ſeems certain that, in ſome caſes, there may be an affray where there is no actual violence; as where a man arms himſelf with dangerous and unuſual weapons, in ſuch a manner as will naturally cauſe a terror to the people; which is ſaid, by the Engliſh authors, to have been always an offence at the common law, and is ſtrictly prohibited by ſtatute: for by 2 Edw. III, c. 3, it is enacted, that except the king's ſervants in his preſence, and his miniſters in executing their office, and ſuch as be in their company aſſiſting them, and alſo upon a cry made for arms to keep the peace, no man ſhall come before the king's juſtices, or other of the king's miniſters doing their office, with force and arms, nor bring any force in affray of peace, nor go nor ride armed, by night or day, in fairs or markets, or in the preſence of the king's juſtices, or other miniſters, or elſewhere; upon pain to forfeit their armour to the king, and their bodies to priſon, at the king's pleaſure: and the king's juſtices in their preſence, ſheriffs, and magiſtrates, and other miniſters in their bailiwicks, lords of franchiſes, and their bailiffs in the ſame, and mayors and bailiffs of cities and boroughs within the ſame, and borough-holders, conſtables, and wardens, of the peace, within their wards, ſhall have power to execute this act. And the judges of aſſize are empowered to puniſh ſuch officers as have not done their duty therein.

If without actual violence.

[a] 1 Hawk. p. 135.

§ 4. PRIVATE —AFFRAY.

"UPON a cry made for arms to keep the peace," it is held upon theſe words of exception, that no perſon is within the intention of this ſtatute, who arms himſelf to ſuppreſs dangerous rioters, rebels, or enemies, and endeavours to ſuppreſs or reſiſt ſuch diſturbers of the peace and quiet of the realm.

IN like manner, no wearing of arms is within the meaning of this ſtatute, unleſs it be accompanied with ſuch circumſtances as are apt to terrify the people: perſons of quality, therefore, do not offend againſt this ſtatute, by wearing common weapons, or having their uſual number of attendants with them, for their ornament or defence: for this gives no cauſe for the leaſt ſuſpicion of an intention to commit any act of violence or diſturbance of the peace [a].

IT is held that a man cannot excuſe the wearing ſuch armour in public, by alleging that ſuch a one threatened him, and that he wears it for the ſafety of his perſon from his aſſault, but it hath been reſolved that no one ſhall incur the penalty of the ſaid ſtatute for aſſembling his neighbours and friends in his own houſe againſt thoſe who threaten to do him any violence therein, becauſe a man's houſe is his caſtle [b].

—INCENDIARY-LETTERS.

BUT even where there has been no affray, or actual fighting and aſſault, the public peace is conceived to be broken by ſuch conduct, as gives others ſerious cauſe of uneaſineſs and alarm. In this view, ſending of incendiary letters is a puniſhable offence; whether the letter be ſigned by the real name of the writer or not.

A MAN wrote letters to his brother-in-law, all of them in his ordinary hand, and ſigned with his own name, and

[a] 1 Hawk. p. 136. [b] Idem.

§ 4. PRIVATE INCENDIARY LETTERS.

threatening him with all ſorts of miſchief, if his demand of money were not complied with; the court of juſticiary ſentenced the delinquent to tranſportation for ſeven years [a].

IN ſome places of the neighbouring kingdom the practice of extorting money by anonymous letters had become ſo frequent, that certain ſtatutes were paſſed puniſhing the offence capitally. The firſt enacts [b], that whoever "ſhall "knowingly ſend any letter, without any name ſubſcribed "thereto, or ſigned with a fictitious name, demanding "money, veniſon, or other valuable thing," ſhall be adjudged guilty of felony, and ſuffer death, without benefit of clergy; which puniſhment was appointed by a ſubſequent ſtatute [c], for any perſon who ſhould ſend a letter, not ſigned or ſigned with a fictitious name, and threatening death or fire-raiſing, "though no money or veniſon, or other valu-"able thing, be demanded in or by ſuch letter." The firſt ſtatute was virtually found not to extend to this country, a libel raiſed thereon being found to infer only an arbitrary puniſhment [d]; and the latter was merely relative to the former, being intitled, "An act to explain and "amend" it. Thoſe acts appear to have been framed for the ſuppreſſion of local and temporary diſorders in a certain quarter of England; and neither of them is needed in aid of our common law, which "has native vigour" to inflict a puniſhment "fully equal to what the urgency of the evil in "this country has at any time required [e].

Verbal threats.

THREATENINGS, though violent and pointed, if they be merely verbal, are not a relevant ground of proſecution to any other effect than binding the delinquent to keep the

[a] March 1789, John Fraſer.
[b] 9 Geo. I, c. 22.
[c] 27 Geo. II, c. 15.
[d] 27th June, and 11th July 1737 James Gray.
[e] Hume, vol. ii, p. 278.

peace, under ſuch penalties as the court, in the circumſtances of the caſe, ſhall ſee cauſe to appoint. Such offences, therefore, properly belong to the next chapter, which regards the *preventive* duties of this magiſtracy. § 4. PRIVATE —INCENDIARY LETTERS.

THIS claſs of offences may be cloſed with a brief account of *duelling*; that imperious "crime which triumphs proudly over both public revenge and private virtue, and tramples both upon the law of the nation and the life of our enemy [a]." —DUELLING.

FOR "this crime, though prohibited by the legiſlature under the pain of death, and the laſting conſequences of an attainder, is unhappily enjoined by the prejudices of mankind, and the fallible voice of popular eſtimation; and when ſhame is the conſequence of obedience to law, the ſword of juſtice loſes its terrors. Hence the duelliſt kills his friend whom he loves; and the judge condemns the duelliſt, whilſt he ſcarcely knows how in his own heart to diſapprove his behaviour [b]." And "the frenzy of paſſion tempts us to decide petty animoſities by the hazard of eternity [c]."

DUELLING is a peculiarity of modern manners. It is no- Its origin.
ſe countenanced by the example of the poliſhed and enlightened ſtates of antiquity. "We find no ſuch crime as this among the Romans, becauſe that wiſe nation employed their lives againſt their enemies, and not againſt their fellow-citizens; and the true trial of courage among them was fighting againſt the enemies of Rome [d]."

[a] Sir George Mackenzie's Criminal law, part i, tit. 12.

[b] Eden's Principles of penal law, 224.

[c] Eden, ibid.

[d] Mackenzie, ibid. Ancient Greece, no doubt, had its ſingle combats, where the prize of ſkill

§ 4. PRIVATE —DUEL-LING.

ITS origin muſt be traced to the rites of barbaric ſuperſtition, which Cæſar and Tacitus firſt preſented to the contemplation of their learned countrymen [a]; and whence, in proceſs of time, ſprung the various trials, by the ordeal, ſingle combat, and other modes of judicial reference to the divine interpoſition, which was believed ſupernaturally to appear on the ſide of juſtice [b].

Superſtitious mode of proof by our old laws

In crimes.

In civil action.

WITH us, in Scotland, who are one tribe of the ſame race, duels of old were allowed, not only for the clearing of innocence in criminal accuſations, but likewiſe in civil cauſes; as, when an heir denied that his predeceſſor had granted a conjunct fee [c]; or where any thing was denied to be lawfully bought by the owner [d]. Accordingly, duelling is mentioned in our books as one of the *general forms and manners of probation uſed in courts*. "Ane thing may be "proven lawfullie, as debt, or be buying or ſelling, or at

ſkill, or valour, or ſtrength, was contended for; and the Roman ſtory affords ſome inſtances of one individual ſtepping forward from the ranks and challenging another from the hoſtile army (ſee Livy, lib. xxv, cap. 11.) We are told by Plutarch, in his life of Marc Antony, that that general propoſed to Octavius (Auguſtus Cæſar) to put the iſſue of the war, and of courſe the ſovereignty of the world, upon a combat between themſelves two. But it is needleſs to obſerve how different ſuch inſtances are from the modern practice of duelling, as a method of revenging private injuries.

[a] *Eſt et alia obſervatio auſpiciorum, quæ gravium bellorum eventus explorant; ejus gentis cum qua bellum eſt, captivum quoquo modo interceptum, cum electo populorum ſuorum, patriis quemque armis committunt; victoria hujus vel illius pro præjudicio accipitur.* (Tacitus de moribus Germinorum.)

[b] *Solebant enim ſuperſtitioſa gentes ſeptentrionales de criminibus inquirere eaque explorare, vel per ferrum candens, vel per aquam, nunc frigidam, nunc calidam: in hac ſi mergerentur, in illo ſi illæſi et intacti fuiſſent, rei criminis impoſiti habebantur.* (Craig de feudis, lib. i, dieg. 7, § 24.)

[c] Reg. mag. lib. ii, c. 16.

"Of dowrie, or an reaſonable "terce," it is ordained, that "gif the "heire denyes all the wife's right "and clame, and alledges in court "that ſhe was never endowed there-"with be his predeceſſor, the querel "or pley may be decided be ſingular "battel."

[d] Ibid. lib. 3, c. 13.

enne, or be the general manner and form of proba- § 4.
uſed and obſerved in courts; that is, *be writ, or be* PRIVATE —DUEL-
ler battell[a]." But the Scottiſh legiſlature began to re- LING.
m this ſavage juriſprudence ſo early as the reign of
ler II; when it was ordained, that in "time coming Improve-
dgement or dome ſall be done by water or irn, as has ment of our law.
uſed in all times[b]." Single combat maintained its
ſometime longer; and Robert III, whoſe regulations
ed thoſe of Philip the Fair, in France, allowed duelling
theſe four caſes: "*firſt*, that the deed for the quhilk
efender is appealed is capitall, and may be puniſhed
e death; *ſecundlie*, that it is quietly and treaſonablie
and committed; *thirdlie*, that he quha is appealed,
lden ſuſpect, be conjectures, or probable ſuſpicions,
reſumptions; *fourthlie*, that the cauſe or controverſie
not be proven otherwiſe bot be battell, and not be
ſs; nor be inſtruments, letters, or by writt[c]." Judi-
ibat at length fell into total diſuſe[d], with the progreſ-
ming of a more enlightened juriſprudence; and for
uelling has been no otherwiſe recogniſed than as a
offence againſt morality and religion, which it has
ought proper to reſtrain by the ſevereſt ſanctions.

e parties actually fight, and one of them be killed, What is
aurder, both by law of Scotland and England, what- duelling.
y have been the provocation, or however fairly the
may have conducted themſelves; for thoſe circum-
of ſudden provocation which lower the offence to

c. vii, § 3.
16.
: laſt trial by battle that
ged in the Engliſh court of
n pleas at Weſtminſter, was
year of queen Elizabeth,

"1571, and was held in Tothilfields,
"Weſtminſter; *non ſine magna juris-*
"*conſultorum perturbatione*, ſaith ſir
"Henry Spelman, who was himſelf
"a witneſs of the ceremony." (Her-
bert's Antiquities, p. 118.)

§ 4. PRIVATE —DUELLING.

the denomination of manſlaughter, are not underſtood by the law of either country to apply to thoſe "who meet avowedly with an intent to murder. This takes in the caſe of "deliberate duelling, where both parties meet avowedly "with an intent to murder, thinking it their duty as gentlemen, and claiming it as their right to wanton with their "own lives, and thoſe of their fellow-creatures; without "any warrant or authority from any power either divine or "human, but in direct contradiction to the laws both of "God and man; and therefore the law has juſtly fixed the "crime and puniſhment of murder on them and on their "ſeconds alſo [a]."

Capital by ſtatute.

FARTHER, the mere act of engaging in a duel, whether the parties receive any wound or not, is made capital by the ſtatute 1600, c. 12, and the provoker is to be puniſhed by a more ignominious death than the other at the pleaſure of the ſovereign [b]. This ſtatute ſaid nothing with reſpect to ſeconds; but the ſubſequent enactment of king William puniſhes the mere giving or accepting of a challenge, "albeit "no fighting enſue," "by the pain of baniſhment and the "eſcheat of moveables, without prejudice to the act already "made againſt the fighting of duels [c]." So preſently ſtands the law. Both theſe ſtatutes, on a late occaſion [d], were declared unanimouſly by the court of juſticiary to be ſtill in force.

THERE have not, however, been many proſecutions on this ſtatute, which muſt be allowed to be a rigorous law;

[a] Blackſtone, Com. b. iv, c. 14.

[b] This act prohibits the fighting of any ſingle combat without the king's licence. Strange, to imagine it poſſible that a ſtatute could have any durable or effectual operation by which duelling is conſidered as criminal or not criminal, from the mere accident of its being permitted or not by the ſovereign!

[c] 1696, c. 35.

[d] Macdonald, 6th Auguſt 1798.

and Mr. Hume obſerves, he could not find in the records more than two inſtances of a conviction upon it [a]. §4. PRIVATE —DUELLING.

THIS ſtatute applies only to a ſerious propoſal and adjuſtment of a combat. Ambiguous hints or inuendos on the one hand, or on the other mere *verba jactantia*, paſſionate words of defiance, uttered face to face, and only tending to a challenge, are puniſhed arbitrarily at common law, but not by the ſtatutory pains. For example, in the courſe of a ſcuffle, one of the perſons engaged in it, beſides other abuſe, calling to another of them to get a ſword, and give him ſatisfaction, was not found a relevant charge under this ſtatute [b].

PROSECUTIONS upon theſe ſtatutes are not competent be-

[a] Vol. ii, p. 282. The one was the caſe of David Cairns, 1ſt and 2d May 1712. "It appears from the "proof that the defiance was given "verbally, and by the one party in "the perſonal preſence of the other; "but in direct and plain terms, and "with mention of time and place, "though accompanied with foul and "opprobrious epithets. The judge "found the libel relevant to infer the "ſtatutory pains; and the pannel "being convicted had ſentence of "eſcheat of moveables and of ba-"niſhment from Scotland for the "ſpace of ſeven years." And in the cauſe of James Maccall, merchant in Leith, indicted at inſtance of Baſſet Eids, land-ſurveyor there; the court had ſuſtained a charge to this effect, that Maccal having thrown out a perſonal defiance to Eids to fight, and threatened to affront him wherever they ſhould again meet, he, early next morning, left a verbal meſſage for him with his ſervant at his houſe in Leith, bearing, that he ſhould wait for Eids upon the beach, and have ſatisfaction from him for what had paſſed the day before. In this caſe it was objected that there was no mention of mortal weapons, nor any expreſs appeal to fight a duel or ſingle combat; but this plea was over-ruled. They find the ſaid James Maccall, pannel, his having, about the time libelled, challenged the ſaid Baſſet Eids to fight, relevant to infer the pains libelled. 5th April 1714.

[b] January 5 and 9, 1719, William Alves againſt William Irving of Gribtoun. "And as to that article of the "libel, which concerns the pannel's "giving a challenge to the ſaid Alex-"ander Alves to fight, the ſaid lords "find the ſame as libelled not rele-"vant to infer the pains of the act "of parliament againſt duelling."

§ 4. PRIVATE DUELLING.

fore the ſeſſions of the peace, but only in the court ciary[a]. Like treaſon, and other heinous offences alrea tioned, it is merely as a breach of the peace that duellin under the juriſdiction of juſtices of the peace, to whc longs to ſecure the delinquents, and take precogniti other ſteps preparatory to a trial; and particularl firſt notice of an intended duel, to ſecure all conce they give ſecurity to keep the peace; a duty ſo m more important, that *preventive* means ſeem to be tl if not the only, legal check by which this crime can ceſsfully reſtrained. For we cannot expect that tl eſt puniſhments will ever be "effectual to eradicate "happy cuſtom, till a method be found out of co "the original aggreſſor to make ſome other ſatisfa "the affronted party, which the world ſhall eſteem "reputable, as that which is now given at the hazai "life and fortune, as well of the perſon inſulted as "who hath given the inſult[b]."

[a] Hume, vol. iii, p. 93. "The "lords of juſticiary are the only "judges in the following crime: the "fighting a duel contrary "tute 1600, c. 12," &c.

[b] Black. Com. b. iv, c. 1

CHAP. II.

Of Preventive Justice, or the Means of Preserving the Public Peace, and guarding Individuals against apprehended Wrong.

§ 1. REASON AND HISTORY OF PREVENTIVE JUSTICE.

1. THE body politic cannot be ſaid to have attained full maturity, or to enjoy perfect health and vigour, while the community have no other ſecurity againſt the diſturbance of the public peace, nor individuals againſt wrong and violence, excepting the infliction of puniſhments after the offence has been committed. Beſides, *vindictive juſtice*, how neceſſary ſoever, and really a kind of mercy to the community, is yet attended with diſagreeable circumſtances, which are happily avoided by the vigilant execution of *preventive juſtice*. The latter, therefore, becomes an object of ſerious attention in every well regulated code.

THE Romans had their *cautio de non offendendo*; by which any perſon who had reaſon to dread violence, applied to the prætor to make the ſuſpected perſon give ſecurity for his peaceable demeanour [a]; their *cautio de damno infecto*, by which the proprietor of an inſecure houſe was obliged to

[a] *Interim adverſus minarum jactationes id uſu receptum eſt, ut inde metuens, implorato judicis auxilio, cautionem de non offendendo exigat a minarum auctore, datis fidejuſſoribus vel pignoribus arbitrio judicis, interponendam.* (Voet, lib. iv, tit. 2, § 13; Gayl. de pace publica, lib. i, cap. 2, 3.)

§ L. REASON AND HISTORY OF IT.

give ſecurity that it ſhould not fall down upon his neighbour's property [a]; and their *cautio de dolo;* or that ſecurity which was exacted of the poſſeſſor of the thing in diſpute, that it ſhould not be deteriorated during the ſubſiſtence of the litigation [b]. In England, under the Saxon conſtitution, the public peace is ſaid to have been effectually preſerved by means of king Alfred's celebrated inſtitution of *decennaries*, or *frankpledges;* whereby the whole neighbourhood, or tithing of freemen, were mutually pledges for the good behaviour of each other [c]. Under the Normans, the old manner of taking ſurety of the peace, which they termed *treves* (truce), was after this order: he, of whom it was demanded, in open court, taking him by the hand who demanded it, did ſolemnly ſwear that neither he, nor any of his, ſhould do him harm. But, in proceſs of time, "the conſcience of an oath" being found leſs to reſtrain evil men than the loſs of goods, it became neceſſary to take ſure bond to the king for the ſecurity of ſuch as were in fear [d]. In this country, in like manner, the antient practice was for men to take aſſurance from one another againſt any violence they apprehended [e]. But an early ſtatute of James I [f], ordained that "firm and ſicker peace be keeped "and halden throw all the realm, and among all and ſindrie "lieges and ſubjectes to our ſoveraigne lord the king; and "that no man take on hand in time to cum, to moove or "make weir againſt uther, under all paine that may follow be "courſe of common law." And by a ſubſequent enactment of the ſame reign [g], it was ſtatute and ordained, "that gif

Saxons.

Normans.

Scotland.

[a] *Cautio de damno infecto præſtatur cum tua domus ruinoſa ruinam minatur domui meæ.* (Calvini Lex. jur. ad vocem.)

[b] *Locum habebat cum petita judicio res eſſet vereretque petitor, ne quid dolo malo poſſeſſor interea committeret; itaque apud judicem poſtulabat ab eo, ut ſibi repromitteret, ſe nihil, in ea re, dolo malo fecturum; hoc modo ſpondet ab ea re, quæ de agitur, dolum malum abeſſe, abfuturum eſſe?* (Calvini, ibid.)

[c] Blackſtone, b. iv, c. 18.

[d] Lamb. b. ii, c. 11.

[e] Stair, b. iv, tit. 48, § 2.

[f] 1424, c. 2.

[g] 1429, c. 129.

§ 1. REASON AND HISTORY OF IT.

"one of the king's lieges has onie doubt of the life, outher "be deed or mannance, or violent preſumption, and he aſk "ſowertie of the partie that the plaint is made upon, ſa that "the partie plaintiff mak pruif of the deed, or mannance, "or of the violent preſumption made or done till him, be "his aith or uther ſufficient pruife, and the ſchireffe do not "that effeiris till his office, in that caſe he ſall be in fourtie "pund to the king, and aſſyeth the party." And in the ſucceeding reign [a], it was declared, "that na man neede till "have aſſurance *ane of uther*, bot that the *kingis peace* be aſ-"ſurance till all men," &c.; "and attour, that gif ony per-"ſon dreadis ane uther, that he paſſe to the ſheriffe or to the "officiares that it effeirs to, and make that knawin, or ſwear "that he dreadis harm, and they ſhall take burrowes of "peace after the actes made thereupon of before."

It was uſual, of old, for ſecuring oneſelf againſt any apprehended harm, to obtain from the chancery the *brief of peace* [b]; which was directed to the coroner [c], who took the complainer's oath, and exacted a pledge or caution from the other, who, if he thereafter offended, was ſaid to break the king's protection; and being convicted by an aſſize, "he ſall be in "the king's mercie; and ſall be condemned to the com-"plainer in the harmes and ſkaith, quherof he is challenged, "be pledges found be him thereanent [d]."

§ 2. LAWBURROWS.

II. ONE method noticed, as we have ſeen in our antient

[b] 1449, c. 13.

[c] Reg. Mag. lib. ii, c. 63, § 15; and Quon. Attach. c. 54; and Appendix II.

[c] See above, p. 4.

[d] Quon. Attach. Ibid.

There was a very particular law reſpecting the inhabitants of Galloway: "At *Dumfries*, it is ſtatute, "conforme to the law, that gif any "man is convict in Galloway, be "battel, or otherwayes, of breaking "the king's peace, he ſall pay to the "king twentie-twa kye, thrie horſe; "or for ilk ane of them nine kye." (Ibid. c. 72.)

§ 2. LAWBURROWS.

ſtatutes for preſerving individuals againſt danger, is letters of lawburrows, derived from *burgh* or *borgh* or *borrow*[a], our old word for caution, ſurety, pledge, and meaning caution found to do nothing contrary to law.

THIS ſecurity may be obtained on application to juſtices of peace, or any magiſtrate. If the lawburrows iſſue from the court of juſticiary, they are executed with the ſame ſolemnity as criminal letters, and caution is found in their books. If from the court of ſeſſion, they proceed on common bills; in which caſe they are executed as any other horning; letters of lawburrows being a horning to that ſpecific intent, and caution is found in the hands of the clerk to the bills. They paſs without caution; yet not of courſe, but upon the oath of the complainer, or other ſufficient evidence of danger[b]. The citation of the party complained of is not neceſſary; becauſe the only ſecurity required is, that he ſhall do no illegal violence, which at any rate would be contrary to his duty as a member of ſociety[c]. But to prevent the inconveniency of cauſeleſs application for lawburrows, the complainer muſt either ſwear that he dreads bodily harm from the party complained of, or bring evidence of the malicious intentions of the latter againſt him.

What are proper cauſes of granting lawburrows

BY the narrative of the ſtatute 1581, c. 117, it is clear, that formerly lawburrows were granted only when the complainer dreaded danger to his own life, or at leaſt bodily harm in his own perſon; but for the reaſon expreſſed in the ſtatute, the ſame was extended thus[d]: "that the complain-"er, their wives, bairns, tenants, and ſervants, ſhall be "harmleſs and ſkaithleſs in their bodies, lands, tacks, poſ-"ſeſſions, goods, and gear, and noways troubled or moleſt-

[a] Skene, de Verborum ſignificatione *ad vocem*.

[b] Stair, vol. iv, tit. 48, § 1.

[c] Erſk. b. iv, tit. 1, § 16.

[d] 1581, c. 117.

"ed therein by the perſons complained on, nor no uthers "of their cauſing, ſending, hounding out, reſetting, com- "mand, aſſiſtance, and ratehabition, whom they may ſtop "or let directly or indirectly otherwiſe than by order of law "or juſtice." § 2. LAWBURROWS.

ANY perſon is intitled to the benefit of this ſecurity who is truly afraid of violence, whether his terror appear to others groundleſs or not. It is ſufficient, therefore, that he makes oath to the reality of his fears. Still, however, it may be proper for the magiſtrate to put ſuch queſtions touching the ground of his apprehenſion as may diſcover whether the application be not utterly unreaſonable, or perhaps wanton and malicious. Fear, if genuine.

IN order to prevent delinquencies, and terrify evil doers, a greater penalty than reparation is inflicted for breaking lawburrows, according to the offender's ſtate and quality [a]. The penalty for this offence was at firſt inflicted at the diſcretion of the privy council, and the fine divided equally betwixt the crown and the party aggrieved [b]; but it came afterwards to be fixed in the following proportion, according to the rank of the offender, viz. for every earl or lord two thouſand pounds Scots; for every great baron one thouſand pounds; a thouſand merks for each freeholder; for a feuar five hundred merks; two hundred merks for each unlanded gentleman; and for every yeoman one hundred merks [c]. The penalty fixed for a yeoman muſt, it is thought, be the rule for perſons of lower degree, no other being mentioned [d]. The ſum may be demanded from the contravener, though he may not have given ſecurity for obedience to the letters [e]; in which caſe the title to purſue is the charge given to him upon the Penalty.

[a] Stair, b. i, tit. 9, § 30.

[b] Parl. 1491, c. 27; 1579, c. 77; 1581, c. 117.

[c] Parl. 1593, c. 166.

[d] Bankton, vol. i, book 1, tit. 10, p. 283.

[e] Act 1597, c. 269.

§ 2. LAWBURROWS.

letters, but where caution is found, the bond of caution is the title to purſue both the contravener and the cautioner [a].

Penalty how incurred.

THE penalty of breaking lawburrows is not incurred merely by the uttering of reproachful words. There muſt be ſome act of violence committed upon the perſon or goods of thoſe who are mentioned in the letters. If the act of contravention be ſlight, the penalty is ſometimes reduced to a leſſer ſum; and at other times no more is decreed againſt the contravener than the real damage ſuſtained by the purſuer [b].

LORD BANKTON obſerves, that beſides the half of the penalty, the party may purſue for his actual damages [c].

THE action of contravention muſt be at the inſtance of the king's advocate as well as of the private party, becauſe it ſuppoſes a breach of the peace, and the penalty is divided between the king and private party. It muſt be proſecuted before either the court of ſeſſion or juſticiary, as the letters proceed from the one or other; and a decree before an inferior court would be void [d].

"BUT," lord Bankton remarks [e], "if the action of contravention is founded on caution for the good behaviour "(which is equivalent to that found in lawburrows), pur-

[a] Erſk. *ſup.*

[b] Spottiſ. Practics, p. 74. 3d Feb. 1629, Anderſon.

[c] Book i, tit. 10, § 177.

[d] Ibid. § 172.

1611, July 6. Kennedy, tailor in Maybole, againſt Hew Kennedy of Garrihorn, and bailie-depute of Carrick, and Quintin Tod. No inferior judge in this kingdom has power to decide in actions of contravention of lawburrows in their courts, albeit they may cauſe parties find caution of lawburrows in their courts; and if they proceed and give proceſs and ſentence of contravention, albeit againſt a defender compearing, the ſame will be null by way of exception. (Fol. Dic. vol. i, p. 493. Haddington, MS. No. 2265. Moriſon's Dict. of Deciſions, p. 7307.)

[e] Ibid.

§ 2. LAWBURROWS.

' ſtant to an order from the juſtices of peace or other infe-
' rior judges, the action may be proſecuted before them, as
I apprehend."

THE grounds on which this action of contravention can
: relevantly brought, have been already noticed in general;
d indeed appear from the cauſe of iſſuing the writ, and
e danger which it has in view to prevent. But what in-
ries are ſufficient to conſtitute this contravention, has of-
n been the ſubject of litigation. A ſummary of thoſe de-
ions from the Dictionary, *voce* Lawburrows, is ſubjoined
the note [a].

Contravention of lawburrows ſuſtained, although there was no age done, but only the party had ped a highway where carts with uſed to paſs. Colv. et. 1591, Strangs. Threatening chacing was not found to be a cient qualification of contraven- without actual ſtriking. Hadd. ch. 1604, Wallace. Paſturing of ds was found not to infer contra- tion, unleſs herding were alſo li- ed. Hadd. Feb. 1604, Schaw. ding not ſuſtained, unleſs it was ged that the goods were violently l on the ground. Hope. (Con- ention.) 5th Dec. 1616, Ander- Lawburrows being found, and party thereafter having pulled off other's hat, and thrown it under feet, and with a threatening to it to his head with a whinger; was found to be no contraven- , becauſe he neither harmed him is perſon or goods. Hadd. 21ſt e 1605, Young. Drawing a ſword invade a man, though no harm owed, was found ſufficient to infer contravention. Hadd. 27th Febru- ary 1607, M'Kie. In a contraven- tion, ſued by Bruce of Greenyards againſt Clackmannan, the libel was found relevant; becauſe Clackman- nan ſtruck the purſuer with his fiſt, and drew his whinger, and ſtruck at him therewith, albeit there was no harm done. Hadd. 21ſt Dec. 1609. The lords found deeds of contraven- tion relevant, which libelled upon the defender's violent entering to the poſſeſſion of the lands, after the pur- ſuer was put in, although it ſhould fall out that the defenders ſhould re duce the decree of removing. Hope, (Contravention.) 6th July 1616, Muirhead. Injurious words, and ſpitting in the face, was found con- travention. Auch. (Contravention.) 23d Jan 1629. Found, that the let- ting in water to the purſuer's going coal, through the defender's that was waſted, was no act of contravention, but the purſuer was allowed to inſiſt for damage and intereſt, if he had ſuſtained any. Spot. (Contraven- tion.) 3d Feb. 1629, Anderſon. A

§ 2. LAWBURROWS.

IF caution is not found, the complainer may proceed to denunciation and caption [a].

ALTHOUGH this writ of lawburrows is iſſued at the ſuit of a party afraid of violence from another, with whom he is on bad terms, yet it has been found not to be done away, nor action of contravention to be barred by a ſubſequent general reconciliation between the parties [b]. A party being charged to find caution in a lawburrows, the lords found, that though he contract friendſhip and familiarity with the charger, yet thereby the lawburrows is not preſumed diſcharged, unleſs it be expreſſed in writing; and in caſe the party had found caution and contravened, the familiarity ſince the finding caution was no relevant exception [c]. A deed of contravention, being the cutting of ſome horſe-loads of wood in the purſuer's property, this exception was ſuſtained, viz. that the purſuer, after the time of the ſaid cutting, had granted liberty to the defender to cut ſome wood there, which the lords found a preſumptive remiſſion; this action being like the Roman *actio injuriarum quæ diſſ-*

deed of contravention was ſuſtained, although there was no violence libelled, the deed being the liferentrix her tilling up land that was found to be no part of her jointure, and, after the purſuer had ſown it, her having cauſed ſow it over again. Dur. 13th Dec. 1631, Whitingham. The lords refuſed to ſuſtain contravention, upon this, that the defender had taken two horſes from the purſuer's tenant, ſince caution was not found to the tenant, nor was he inſiſting here, but might by himſelf ſue a ſpulzie, &c. nor was the tenor of the act here regarded, viz. that the purſuer, his men, tenants, &c. ſhould be harmleſs, &c. ſeeing that was only the ſtile of court. Dur. Auch. (Contravention.) 28th Jan. 1634, Grant. The like; Dur. 9th February 1633, Lindſay.

[a] A late inſtance occurred of a huſband, who lived ſeparate from his wife, in conſequence of a voluntary deed of ſeparation, having taken out a lawburrows againſt her, and ſhe not having found caution, he gave her a charge of horning; and thereafter applied for caption. The lord ordinary on the bills had ſome heſitation, but upon conſideration allowed the caption to go out.

[b] Hadd. 6th Feb. 1607, Torbreck.

[c] Auch. (Contravention.) 9th July 1628.

mulatione tollitur: but they reſerved to the purſuer action for ſimple damage and intereſt [a]. § 2. LAWBURROWS.

If lawburrows be taken out with the malicious purpoſe of fronting and diſtreſſing an innocent perſon, from whom no harm was ſeriouſly apprehended, it is a very culpable abuſe of a legal remedy, and injurious to the individual, who, according to lord Bankton [b], will be founded in an action of damages, on the authority of the civil law, which puniſhed abuſe with impriſonment who maliciouſly fled to the altar, under the falſe pretext of dreading harm from particular perſons [c]. If maliciouſly applied for.

But with us, in the caſe of lawburrows, it has been doubted, whether the law can be ſuppoſed to intend, that any one who takes this oath, which has the effect only of binding the party complained of more particularly to that courſe of conduct, which he is at any rate obliged to obſerve, ſhall be farther queſtioned reſpecting the reality of his fears [d]. Damages, if due.

All perſons whatever may obtain this ſecurity of lawburrows againſt thoſe from whom they dread danger. A wife may obtain it againſt her huſband; and even the huſband againſt his wife: in which caſes, however, of family quarrels, obſerves lord Bankton [e], "ſolid grounds of fear ought to be particulariſed, or otherwiſe the charge will be ſuſpended. Who may take out this writ.

[a] Not only private perſons, but even communities, and

[a] Dur. 11th Jan. 1633, king's advocate, &c.

[b] Book i, tit. 10, § 172.

[c] *Eumque qui imaginem Cæſaris in iudicium alterius protuliſſet, in vincula publica coerceri, D. Pius reſcripſit.*—(L. 28, § 7. D. de pœn.)

[d] Hume, vol. i, c. 11, § 3.

[e] Book i, tit. 10, § 176.

§ 2. LAWBUR-ROWS.

" then the town-council as their repreſentatives
" ſerved with letters of lawburrows at the inſtance
" who dread from them bodily harm; but in ſuch
" complainer muſt particulariſe ſome act of the co
" as ſuch, in order to infer a contravention; for th
" of particular inhabitants, or even of the magiſtr
" not be otherwiſe chargeable on the corporation
" the ſame rule, the community may ſerve ſu
" againſt thoſe who moleſt them; and in ſuch caſ
" giſtrates, as adminiſtrators, muſt give their oath
" miſchief dreaded by the community, which ge
" as to their poſſeſſions[a]."

LORD HADDINGTON reports one inſtance of thi of lawburrows being iſſued at the ſuit of one co againſt another[b].

[a] Book i, tit. 10, § 170.

" There is alſo a kind of lawbur-
" rows competent to royal boroughs
" and ſea-ports, &c. againſt thoſe
" who ſtop, impede, or moleſt, their
" common paſſages, and the high-
" ways leading to or from them:
" action may be ſued at the inſtance
" of the party aggrieved, on ſix days
" warning, before the lords of ſeſſion
" againſt the offenders, for redreſs of
" the wrong and oppreſſion commit-
" ted by them; and to find caution
" acted in the books of ſeſſion, under
" ſuch penalty as the lords ſhall tax
" or modify, never to commit the
" like by themſelves, or others whom
" they may let or hinder; the one
" half of which penalties goes to the
" king, and the other to the party
" aggrieved, as in other lawburrows;
" ſuch action is truly of the nature
" of a moleſtation; but becauſe of
" the importance of the caſe to trade
" and commerce, and te
" people, it is only comp
" the court of ſeſſion (15
" notwithſtanding the
" which ordained moleſt
" purſued only before th
" dinary." Ibid.

[b] " 1594, June, Auk
" Aberdene againſt New
" auld toune of Aberdene
" againſt the provoſt, ba
" ſall, merchandis, and cr
" the new toune of Aberd
" ing of lawburrowis to-t
" ſeverall paynis reſpectiv
" like manner, the lairde
" chairgis againſt the prov
" and counſall, of Rutl
" finding lawburrowis to
" 1595, and the year pr
" Crichton againſt Sanqu
dington, MS. No. 409.
Dict. of Deciſ. v. Lawbur

§ 2. LAWBURROWS.

THE competency of uſing this writ, in the caſe of magiſtrates and communities, may have ſuggeſted, but can neither excuſe nor palliate, the iſſuing of it at the ſuit of the ſovereign againſt his ſubjects[a]. Even at a period, when public and private rights were wantonly violated by a ſyſtem of tyranny and oppreſſion, this perverſion of law, and violation of the royal prerogative and majeſty, appeared ſcarcely leſs ridiculous[b] than at preſent, when the king and his people are reciprocally ſecure by the legal eſtabliſhment of civil and religious liberty.

§ 3. SURETY OF THE PEACE.

III. SURETY of the peace is the acknowledging a recog-

[a] "Throughout the weſtern counties the landlords were required to enter into bonds under the ſame penalties, which the delinquents incurred, that neither their families, domeſtics, tenants, nor their ſervants, ſhould withdraw from public worſhip; or adhere to conventicles; or ſuccour field-preachers, or perſons intercommuned." (Laing's Hiſt. of Scotland, v. iv, p. 85.) Theſe bonds *(of peace*, as they were called) being refuſed by the gentlemen, "a precaution uſed only againſt perſonal danger, was converted by the moſt oppreſſive chicane into an alternative for the bonds, a general writ of lawburrows was iſſued at the ſuit of the king againſt a whole county to find ſecurity, according to the terms of the bonds for preventing conventicles, under the penalty of double rents, and any other puniſhment which the council might inflict." *Ibid.)* See the writs *ad longum* in Wodrow's Hiſtory, vol. i, app. p. 181. This illegal perverſion of an uſeful writ, cannot be better expoſed than by ſir George Mackenzie's ſerious attempt to vindicate it. "Nor "was there any more ſurety found, "at leaſt from maſters and heritors, "than the ordinary ſurety of law-"burrows; by the very ſtile where-"of any private man may force an-"other by the law to ſecure him "againſt all prejudices from his men, "tenants, and ſervants, and others "of his command, outhounding and "ratihabition, and that the king had "great reaſon to be jealous of their "breaking the peace, appears from," &c. See his Vindication of king Charles the Second's government. Works, vol. ii, p. 345.

[b] "King Charles I was much blamed for declaring his Scots ſubjects "rebels; but the managers made his "ſon *ridiculous* in aſking lawburrows "from his ſubjects." Wodrow's Hiſt. vol. i, p. 473.

§ 3. SURETY OF THE PEACE

niſance or bond to the king, taken by a competent judge, for keeping the peace [a].

Who may take it.

IT is taken by a juſtice of peace, or other magiſtrate, under ſuch penalties as the circumſtances of the caſe may ſeem to require. Any one juſtice is intitled to exact this ſurety, as well by the general acts [b] as by the commiſſion of the peace.

How it may be taken.

SURETY of the peace may be taken by a juſtice of peace either miniſterially or judicially. In the one caſe, an officer merely, he gives obedience to ſome higher authority; in the other, a judge or magiſtrate, he acts by virtue of his own proper power and juriſdiction [c].

Or as a judge.

As a judge or magiſtrate, he may command this ſurety either of his own motion, or at the prayer and requeſt of another.

Whom he may bind of his own motion.

THE juſtice of peace, upon his own motion, may bind thoſe to keep the peace, who in his preſence make an affray or ſtrike or aſſault any perſon; or threaten to kill, beat, hurt, another, or to burn his houſe; or contend together with hot words; "whence," ſays Lambard, "oftentimes "do enſue affrays and batteries, and ſometimes maims, "manſlaughters and murders." In like manner, he may exact it of all thoſe who go about with unuſual weapons, or attendants, to the terror of the people; or whom the conſtable brings before him for a breach of the peace, committed in preſence of ſuch conſtable; or thoſe convicted of having forfeited their bond, or recognizance, to keep the peace; and, generally, whomſoever he ſuſpects of an intention of breaking the peace [d].

Whom the juſtice may bind to the peace.

[a] Burn, *ad verum*.
[b] 1617 and 1661.
[c] Lambard, b. ii, c. 2.
[d] See Dr. Burn (Surety of the peace.) Bacon's Abridge. *(Ibid.)*

§ 3. SURETY OF THE PEACE.

THE juſtice of peace, upon his own diſcretion, as well as upon any man's complaint, may bind thoſe to the peace who have made an affray, though out of his preſence [a].

IF the ſureties of any one who is bound to keep the peace be inſufficient, the ſame, or any other juſtice of peace, may command him to find new ſureties [b], and may ſend him to priſon till he do ſo.

A JUSTICE of peace may perſuade a man to require the ſurety of peace againſt another, and he himſelf may grant a warrant for it; becauſe it is no more than he might have granted of his own authority without any demand made, and it ſhall be preſumed that he ſaw cauſe to do all this [c].

Who may demand it.

ANY juſtice of peace may command this ſurety of the peace, and grant his warrant for it upon the complaint of any perſon "threatened, or fearing to be wronged [d]." All perſons whatever under the king's protection, being of ſane memory, and equally whether natives or aliens, excommunicated or attainted of treaſon, have a right to demand ſurety of the peace. A wife may demand it againſt her huſband, threatening to beat her outrageouſly, and a huſband may have it againſt his wife [e]; who, if ſhe cannot find ſureties, muſt be committed; "and ſo," obſerves Crompton, "a "man may be rid of a ſcold [f]." This ſecurity, according to Dalton, may be granted to a perſon at the age of fourteen, but neither *to* one of *non* ſane memory, at his own requeſt; nor *againſt* him [g].

Againſt whom may he grant it.

Againſt whom

THIS ſurety may be obtained againſt any perſon found in

[a] Dalt. c. 116.
[b] Ibid.
[c] Ibid.
[d] Act 1617 and 1664.
[e] 1 Hawk. 126. Burn (Surety of the peace.
[f] Crom. 118.
[g] C. 117.

§ 3. SURETY OF THE PEACE

mind, magiſtrate or private perſon, whether he be of full age or under age. But perſons under age, and married women, ought to find ſecurity by their friends, and not be bound themſelves. Surety of the peace may be granted againſt the ſheriff, coroner, and other ſuch officers of juſtice; who ſhould not, however, it is ſaid, be bound *verſus cunctum populum*, but to thoſe only who demand it; leſt otherwiſe it ſhould argue them unworthy of their offices [a].

Surety for the peace.

Againſt a ſheriff.

Againſt a juſtice of peace.

A JUSTICE of peace may grant this ſurety to any man againſt one of his fellow juſtices, though great diſcretion is here to be uſed [b]. "Yea," ſays Dalton [c], "a juſtice of peace, "upon demand, may grant this ſurety againſt his own wife; "and yet he and his wife are but one perſon in law."

Oath neceſſary.

THE party muſt ſwear that he is afraid (to uſe the expreſſion of the ſtatute) of being wronged, and that he does not require the ſurety out of malice.

If fear of other than *corporal* hurt will do

THE commiſſion appears to have in view corporal hurt, as by killing or beating, or the firing of their houſes. But the more approved opinion is, that this ſurety may be demanded on the ground of threats of impriſonment, which may be conſidered as an aſſault and injury done to the perſon [d]: for though one wrongfully impriſoned may no doubt afterwards recover damages, yet ſo may he who is wrongfully beaten. This circumſtance no more ſuperſedes the neceſſity of ſurety of the peace in the one caſe than in the other [e].

IT is no ground for demanding this ſurety that a man is at variance, or has a ſuit with his neighbour [f].

A MAN is intitled to demand this ſurety, who is afraid of

[a] Dalt. c. 117.
[b] Ibid.
[c] Ibid.
[d] Burn, *ad voc.*
[e] 1 Hawk. 127. Burn.
[f] Dalton, c. 116.

§ 3. SURETY OF THE PEACE

hurt (if not to himſelf perſonally, yet) to his wife or children; but (according to the Engliſh writers) not where he is afraid of hurt or injury only to his ſervants [a] or cattle, or other goods. But the broader expreſſion of our ſtatute ſeems to include thoſe kinds of damage alſo; that dreaded to our goods or cattle at leaſt, be the law with reſpect to ſervants what it may.

Is fear of hurt to ſervants or cattle a reaſon for obtaining it.

IT is the fear of ſome preſent or future injury that intitles one to demand ſurety of the peace; which is intended for the relief of thoſe only who are in fear. If the injury has actually been committed, it is too late to apply for this remedy; redreſs muſt then be obtained by the puniſhment of the delinquent, who may be bound over to ſtand trial [b].

It muſt be preſent fear.

THIS ſurety may be commanded either by word or by writing [c].

Manner of taking it.

A JUSTICE of peace may, by word, command any man to find ſureties for the peace, who, in his preſence and hearing, threatens another; or makes an affray or aſſault on another, or is guilty of any thing tending to a breach of the peace; or who happens to be in the perſonal preſence of the juſtice when a third party ſwears the peace againſt him [d].

By word.

IN theſe caſes, the juſtice may (by word only) command the conſtable, or any other known officer, or his own ſervant, being then preſent, to arreſt ſuch party, to find ſureties for the peace, and to take him into his or their cuſtody,

[a] Burn, Surety of the peace. "The reaſon why a man may not have ſureties of the peace againſt another, for that he feareth he will do harm to his ſervants, ſeemeth to be, becauſe it ſhould be the ſervant's fear in ſuch caſe and not the maſters, and the ſervant's own oath before the juſtice is neceſſary."

[b] Dalt. c. 116.

[c] Ibid. c. 118.

[d] Ibid.

§ 3. SURETY OF THE PEACE

&c [a]. and if the party ſhall refuſe to find ſuch ſureties, then the juſtice of peace may commit him to the gaol.

BUT the juſtice muſt make his warrant or precepts *in writing*, if the party be abſent againſt whom this ſurety of the peace is demanded; for a juſtice of peace cannot, by words only, ſend for, or command, any man, who is not in his preſence, to be arreſted, or brought before him, or to be impriſoned [b].

By writ.

THE precept or warrant [c] in writing, ſubſcribed by the juſtice, muſt be directed to ſome officer, or other indifferent perſon, and muſt contain the cauſe for which, and at whoſe ſuit, it is granted, to the intent the party to be bound may provide his ſureties, and take them with him.

THE warrant may direct [d] the party to be brought before either the ſame or any other juſtice, or before the granter of it alone, who may be ſuppoſed beſt acquainted with the circumſtances of the caſe, and fitteſt to do what right.

Offer of ſureties.

WHEN the party comes before the juſtice, he muſt offer ſureties, otherwiſe the juſtice may commit him; for the juſtice needeth not to *demand* ſurety of him [e].

When new ſureties may be demanded.

NEW ſureties may be required, if the former prove inſufficient; but not, it is ſaid, if they die; their repreſentatives continuing liable [f].

In the caſe of the death of the ſurety?

ONE *convicted by due courſe of law* of breaking a bond to keep the peace, may, at the diſcretion of the juſtice, be bound anew [g].

[a] Dalt. c. 118.
[b] Ibid. Burn, Surety of the peace.
[c] Appendix II.
[d] Burn, ibid. Dalt. ibid.
[e] Dalt. c. 118, 169.
[f] Dalt. c. 116, 119.
[g] Lambard, b. ii, c. 2.

§ 3. SURETY OF THE PEACE

regular form of a recognizance is to bind the party
ır at the next ſeſſions of the peace; and in the
e to keep the peace as to the king and all his lieges,
r as to the complaining party [a].

Form of the bond or recognizance.

bond muſt contain the name, place of abode, and
d calling, both of principal and ſureties, and the
which they are bound [b]; and it is moſt commonly
to a condition, which is either indorſed or under-
or contained within the body of it, upon the per-
e of which the recognizance ſhall be void [c].

: bond does not mention that it is for the preſerva- Muſt bear
he peace, it is void, as *coram non judice*; juſtices not to be for the *peace*.
authority to take recognizances generally, but for
only which concern their office [d].

e recognizance be, that the party bound ſhall not Muſt be for *keeping* the peace.
maim, it is not good; becauſe the peace may be
by burning, or other acts of violence [e].

period for which the bond may be taken is diſcre- How long may a perſon be bound to keep the peace.
either ſhorter or longer, according to circumſtances;
r, or more; or ſometimes, on urgent occaſions, even
The juſtice may exact ſurety for life, either of his
ıtion or upon complaint. But ſuch ſurety, which
ice cannot afterwards releaſe, ought not to be exact-
out due deliberation and good cauſe; as if the of-
ɔe known to be a common rioter, or otherwiſe a dan-
perſon [f]. But it ſeems to be agreed that it may be How discharged.
ged by the death or demiſe of the king, in whoſe
was taken; or of the principal party who was bound

, Surety of the peace. 3
c. 1.
, ibid.

[d] Ibid.
[e] Dalt. c. 119.
[f] Ibid.

§ 3. SURETY OF THE PEACE —HOW DISCHARGED.

thereby, if it were not previouſly forfeited [a]; or, according to ſome, by the releaſe of the party at whoſe complaint it was taken, being certified together with it; but this may juſtly be queſtioned, becauſe the recognizance is not to the ſubject, but to the king, and conſequently cannot be diſcharged by the ſubject, who is not a party to it; ſuch a releaſe, however, will be a good inducement to the court, to diſcharge the recognizance [b].

A recognizance generally to keep the peace.

THOUGH the recognizance do not limit any time of appearance, but be generally to keep the peace, yet it is good; for the time of appearance is referred to the diſcretion of the juſtice, and the chief ſcope is the keeping of the peace.

If it ſpecifies the time, but no perſon before whom appearance is to be made.

If the recognizance name no perſon before whom the party ſo bound ſhall appear, he may appear in any place out of the ſeſſions before that juſtice of peace which took the recognizance; but in the two laſt caſes, Mr. Dalton thinks, it would be ſafe for the party to appear at the next ſeſſions for the peace, and there to record his appearance [c].

When the recognizance is to appear before the juſtice within forty days.

IF the recognizance be to appear before the juſtice within any period, before the expiry whereof there ſhall happen to be a general ſeſſions of the peace, the obligee ought to appear at ſuch ſeſſions.

Releaſe of a recognizance.

THE king may pardon and remit the forfeiture incurred by breaking a recognizance, but he cannot releaſe the recognizance itſelf before it be broken, the ſubject having an intereſt in it.

Sureties repreſentatives, if bound on his death.

ON the death of the ſureties, their repreſentatives, as already obſerved, are ſaid to continue bound [d].

IF one, impriſoned for default of ſureties, afterwards offer

[a] 1 Hawk. 29.
[b] Ibid. 129.
[c] Dalton, c. 119.
[d] 1 Hawk. 129.

§ 3. SURETY OF THE PEACE —HOW DISCHARGED.

ſufficient ſureties, or if he who demands the peace againſt him happen to die, the juſtice may grant warrant to ſet him at liberty [a].

Forfeiture of the recognizance.

MANY offences againſt the peace, for which an indictment will lie, are yet no forfeiture of the recognizance for the peace; for the act that ſhall cauſe a forfeiture of ſuch recognizance, muſt be done or intended unto the perſon, or in terror of the people. Therefore, to enter into lands, where he ought to bring his action, or to diſuſe another of his lands, or to enter into lands or tenements with force, being without offer of violence to any man's perſon, and without public terror; or to do a treſpaſs in another man's corn or graſs; or to take away another man's goods wrongfully, ſo as be not from his perſon; or to ſteal another man's horſe or other goods feloniouſly, being not from his perſon: all theſe, and the like, though breaches of the peace, yet will make no breach of this recognizance, nor breach of the peace, within the meaning of the commiſſion of the peace [b]. More particularly, the recognizance is forfeited, if the party make default of appearance [c].

Default of appearance.

THE ſeſſions, however, is not, it ſeems, bound peremptorily to record his default, but may equitably conſider of the reaſonableneſs of any excuſe [d] he may offer for his not appearing.

AND Mr. Dalton ſays, he has known the juſtices, upon due proof of the party's ſickneſs, to forbear certifying or recording ſuch forfeiture or default, taking ſureties for the peace of ſome friends of his preſent in court until the next ſeſſions; for that the principal intent of the recognizance

[a] Dalt. c. 118. Burn, Surety of the peace.
[b] Dalt. c. 121.
[c] 3 Hales 7, c. 1.
[d] 1 Hawk. 130.

§ 3. SURETY OF THE PEACE —HOW FORFEITED

was but the preſervation of the peace; but he queſtions how this is warrantable by their oath [a].

If by violence by others through his procuring.

IT may be forfeited by any actual violence to the perſon of another, whether it be done by the party himſelf, or by others through his procurement; as manſlaughter, rape, robbery, unlawful impriſonment, and the like [b].

By treaſon. By unlawfully.

ALSO it has been held, that it may be forfeited by any treaſon againſt the king's perſon, or by an unlawful aſſembly in terror of the people, and even by words directly tending to a breach of the peace; as by challenging one to fight, or in one's preſence threatening to beat him [c]; but if the perſon, whom the party complained of, ſhall threaten to kill or beat, be abſent, this is no forfeiture of the recognizance, unleſs he afterwards ſhall lie in wait for him to kill or beat him, or otherwiſe attempt to carry his threats into execution [d].

Not by bare words of heat or choler.

IT is not forfeited by bare words of heat and choler, as the calling a man a knave, teller of lies, raſcal, or drunkard; which words may provoke indeed a choleric man, but yet do not directly challenge him to break the peace, nor afford any evidence that the ſpeaker deſigned to carry his reſentment farther. Even a recognizance for good behaviour, though it binds to a greater circumſpection than the other, is ſaid not to be forfeited for ſuch words.

Are there any actual aſſaults which do not amount to a forfeiture of.

SOME actual aſſaults on the perſon of another, do not amount to a forfeiture of ſuch recognizance; as if an officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beat or wound him in the attempt to

[a] Dalt. c. 120.
[b] 1 Hawk. 130.
[c] Idem.
[d] Dalt. c. 121.

take him; or if a parent, in a reaſonable manner chaſtiſe his child; or a maſter his ſervant, being actually in his ſervice at the time; or a ſchoolmaſter his ſcholar; or a gaoler his priſoner; or even (according to ſome Engliſh lawyers) a huſband his wife; or if one confine a friend, who is mad, and bind and beat him in ſuch manner as is proper in his circumſtances; or if a man force a ſword from one offering to kill another; or gently lay his hands upon another, and thereby ſtay him from inciting a dog againſt a third perſon; or beat another (without wounding him, or throwing at him a dangerous weapon), who wrong fully endeavours with violence to diſpoſſeſs him of his lands or goods, or the goods of another, delivered to him to be kept, and will not deſiſt upon his laying his hands gently on him, and diſturbing him; or if a man beat, or as ſome ſay, wound or maim one who makes an aſſault upon his perſon, or that of his wife, parent, child, or maſter, eſpecially if it appear that he did all he could to avoid fighting before he gave the wound; or fight with, or beat, one who attempts to kill any ſtranger; or even threaten to kill one who puts him in fear of death, in ſuch a place where he cannot ſafely fly from him; or impriſon thoſe whom he ſees fighting till the heat is over [a].

§ 3. SURETY OF THE PEACE — HOW FORFEITED

If by all actual aſſaults or violence to the perſon.

IV. SURETY for good behaviour, is a recognizance entered into to the king for being of good behaviour [b]. The good behaviour including the peace, he that is bound to the former, is therein bound to the latter alſo [c].

§ 4. SURETY OF THE GOOD BEHAVIOUR

Definition of it.

BY the common law of England, the antient conſervators of the peace do not appear to have had any power touching the good behaviour, in ſo far as it is contradiſtinguiſhed from the peace; the power which the juſtices preſently ex-

Ancient conſervators of the peace, their power reſpecting the good behaviour.

[a] 1 Hawk. 130, 131. Burn, *ad vocem.*

[b] Bac. Abridg. *ad vocem.*

[c] Dalt. 122. Burn, *ad vocem.*

§ 4. SURETY OF THE GOOD BEHAVIOUR

ercise in relation thereto, solely depending upon the commission of the peace, and the statute 34 Edw. III, c. 1 [a].

SURETY of the good behaviour has not been noticed by our writers in distinction to surety of the peace; but as queen Anne's act has undoubtedly communicated this branch also of the powers of English justices to their Scottish brethren, it may be necessary to explain the former, so far as it differs from the latter.

—WHEN TO BE REQUIRED.

FIRST, then, what are grounds of demanding surety of the good behaviour.

THE commission assigns the justices, jointly and severally, and every one of them, to cause find sufficient security for the peace, or good behaviour. But this is limited to two cases, viz. those who "to any of our people concerning their "bodies, or the firing of their houses, have used threats." But the statute 34 Edw. III, c. 1, empowers the justices of peace to "take of all them who be not of good fame, where they "shall be found, sufficient surety and main prize of their "good behaviour towards the king and his people." The words, "not of good behaviour," were long understood to refer to such offences only as have a relation to the peace [b]; but it is now held that a man may be bound to his good behaviour for causes of scandal, *contra bones mores*, as well as *contra pacem* [c]. The first inlet to the larger construction, was a case where the court of king's bench adjudged it lawful to arrest a man for the good behaviour for frequenting a suspected bawdy-house with women of bad fame [d]. On the same principle, Mr. Lambard thought, that, with equal reason, the reputed father of a bastard child may be bound to the good behaviour. And Mr. Dalton, a few years after-

Origin of the power of English justices as to the good behaviour.

[a] Burn, *ad vocem*.
[b] Ibid.
[c] Burn, *ad vocem*.
[d] 13 Hales, 7, 10. Burns, *ad vocem*.

§ 3. SURETY OF THE GOOD BEHAVIOUR —WHEN TO BE REQUIRED.

livers it abſolutely that he may be ſo bound. Theſe ien, "*them that be not of good fame*," are of great la- id leave much to be determined by the diſcretion of ſtrate himſelf. In particular, however, it is laid iat a juſtice may demand ſurety for good behaviour who ſleep in the day, and wake in the night [a]; or icious company; or live expenſively, without viſible unleſs they give a good account of ſuch their liv- or who utter words tending to ſcandalize the go- ent, or in abuſe of the officers of juſtice, eſpecially ecution of their office; alſo of common drunkards, ſters, cheats, idle vagabonds, "haunters of ale- or taverns, and common gameſters [c];" of libellers, by ſcandalous writings, or words, or pictures, as ging, &c. tokens of ſhame or diſgrace, near the where the party, thereby traduced, doth moſt con- as the pictures of the gallows, pillory, cockery orns, or ſuch like [d];" of the authors of obſcene pu- , though "without any kind of reflection upon e," and "not puniſhable at all by a proſecution at n law [e];" and generally of all others whoſe miſbe- ay reaſonably bring them within the meaning of as perſons not of good fame.

o juſtice can compel any perſon to find ſurety of behaviour upon a general information; nor for any relſome, or unmannerly words; "as barely calling rogue or raſcal, or teller of lies, or drunkard [f]."

REFORE, (ſays Dr. Burn) upon the whole, it may be to conclude, that the magiſtrate, in this article of d behaviour, cannot exerciſe too much caution and

me, vol. iv, p. 256.
289.
290.

[c] 1 Hawk. p. 195.
[f] Burn, tit. Surety for the good behaviour.

§3. SURETY OF THE GOOD BEHAVIOUR

" good adviſement; that in matters which the law hath " left indefinite, it is better to fall ſhort of, than to exceed, " his commiſſion and authority; that, to bind a man to the " good behaviour upon the ſtatute for *evil fame* in general, " may not always be with ſafety; not only becauſe upon an " action brought it may be hard to prove ſuch evil fame, " but alſo becauſe in fact it is not always true, for many a " good man hath been evil ſpoken of: that although in ſome " caſes a juſtice of the peace may have a *diſcretionary* power " (as Mr. Hawkins expreſſeth it) yet he muſt remember " withal that it is a *legal* diſcretion, as Mr. Barlow terms " it, in which, in favour of liberty, great tenderneſs is to be " uſed; or, as lord Coke hath defined it, diſcretion is a " knowledge or underſtanding to diſcern between truth and " falſehood, between right and wrong, between ſhadows " and ſubſtance, between equity and colourable gloſſes and " pretences, and not to do according to our wills and priv- " ate affections; and ſuch diſcretion ought to be limited " and bounded with the rules of reaſon, law, and juſtice [a]." If the magiſtrate " commit one for want of ſureties, he muſt " ſhew cauſe with convenient certainty [b]."

IF a perſon have been convicted of a miſdemeanour, it is uſually part of the judgment, that he ſhall find ſecurity for his good behaviour for ſometime.

— HOW FORFEITED

SECOND. What is a forfeiture of a recognizance for being of a good behaviour?

DALTON ſays, that he who is bound to the good behaviour, ought to demean himſelf well in his carriage, and in his company, not doing any thing which ſhall be a cauſe of breach of the peace, or to put the people in fear, dread, or trouble: this ſurety ſhall be intended of all things which

[a] 5 Co. 100. 10 Co. 140. [b] Burn, ibid.

§ 3. SURETY OF THE GOOD BEHAVIOUR —HOW FORFEITED

the peace, but not in miſdoing of other things touch not the peace [a].

RKINS ſays, it has been laid down as a general rule, hatever will be a good cauſe to compel a man to rety for his good behaviour, will forfeit a recogniz- or it [b]. But this has ſince been denied to be law. ſeems to be very unreaſonable. The good of the may make it proper, in ſome caſes, to compel a ſuſ- perſon to enter into a recognizance for being of good our, but it would be extremely hard that the recogniz- ould be forfeited before he has been guilty of miſbe- . A recognizance for being of good behaviour, is d by the ſpeaking of ſeditious words.

ECOGNIZANCE for keeping the peace is not forfeited eatening words, unleſs the party threatened be pre- ut a recognizance for being of good behaviour is for- by ſuch words, although the party concerning whom ere ſpoken be not preſent.

ECOGNIZANCE for being of good behaviour, is not in ieral forfeited by words of heat, as calling a perſon raſcal, liar, or drunkard. But if words of heat are to a juſtice of the peace in the execution of his of- iis is ſuch miſbehaviour as amounts to a forfeiture of nizance for being of good behaviour; for the public t requires that magiſtrates ſhould be treated with re- A recognizance for being of good behaviour is forfeit- the recognizers having a number of armed attend- lthough he have not been guilty of a breach of the

If a perſon, who is under a recognizance for being d behaviour, is arreſted upon ſuſpicion of felony, and ards eſcape, it is a forfeiture of the recognizance. Al-

[a] Dalt. 122. [b] 1 Hawk. 232.

§ 3. SURETY OF THE GOOD BEHAVIOUR —HOW FORFEITED

though the arreſt be tortious, no felony having been committed, the recognizance is forfeited by the eſcape, which a miſbehaviour; it being the duty of every perſon to ſtand to the law, and anſwer to every thing he is charged with.

WHEN a recognizance for being of good behaviour, purſuant to the direction of a ſtatute, is entered into by a perſon who has done ſomething prohibited by the ſtatute, the being afterwards guilty of another offence againſt the ſtatute is a forfeiture of the recognizance.

§ 5. POWERS FOR PREVENTING CIVIL WRONG —GENERAL VIEW.

V. HITHERTO we have been conſidering the ſeveral expedients for preventing wrong and violence, properly criminal. We now proceed to the delicate and important duty of preventing that civil wrong and loſs which ariſe from the debtor's withdrawing from the country without paying his debt; this juriſdiction being nearly allied to the other, and, in more than one particular, exerciſed in a criminal ſhape and manner.

Civil proceſs begun by perſonal arreſt.

IN ſome countries perſonal arreſt, even in the caſe of civil actions, takes place without much ceremony. The Romans commenced every action by perſonally ſeizing the defender, who was dragged to priſon, unleſs he found ſecurity for his appearance [a]. Originally, in all actions, *in rem*, for example, the caution required was *judicatum ſolvi:* but afterwards, only *judicio ſiſti* [b]. The Engliſh law, here, coincides with the Roman; where our own, and ſome other codes, (which gratefully acknowledge their obligations, in general, to that ad

Roman law

Engliſh practice.

[a] Hence Horace's fortunate eſcape from his troubleſome companion in the *via ſacra*:

Caſu venit obvius illi
Adverſarius: et, Quo tu turpiſſime? magna
Exclamat voce: et, Licet anteſtari? Ego vero
Oppono auriculam. RAPIT IN JUS: *clamor utrinque,*
Undique concurſus. Sic me ſervavit Apollo. Serm. lib. i, ſat.

[b] Inſt. lib. iv, tit. 11, § 52.

mired ſyſtem of human reaſon) preferr a different principle.

§ 5. PREVENTION OF CIVIL WRONG —GENERAL VIEW.

IN England, however, it ſeems to be only upon actions of treſpaſs, *vi et armis*, or for other injuries, which, though not forcible, are yet treſpaſſes againſt the peace, as deceit and conſpiracy, where the violence of the wrong requires a more ſpeedy remedy, that the original writ commands the defendant to be at once attached without any precedent warning. In other matters, the perſonal arreſt is preſumed to be in conſequence of the defendant's diſobedience to a previous citation, ordering his appearance. But this difference has become matter of mere form; it being now uſual in practice to ſue out the *capias*, (or writ for arreſting the defendant perſonally) in the firſt inſtance, upon a ſuppoſed return of the ſheriff, eſpecially if it be ſuſpected that the defendant, upon notice of the action, will abſcond; and afterwards a fictitious original is drawn up, if the party is called upon ſo to do, with a proper return thereupon, in order to give the proceedings a colour of regularity [a].

Our antient practice.

SOMETHING reſembling this procedure obtained in our moſt antient practice, the ſtriking coincidence between which and the old Engliſh law, it is curious and uſeful to remark with the preſent diſſimilarity of the two ſyſtems.

"ATTACHMENTS," (ſays preſident Balfour) "ar the beginning and origin of pleyis and proceſs of wrangis and unlauch [b]." In caſes even of treſpaſſes as well as of contempt,

[a] Black. b. iii, c. 19.

[b] Attachment may be made ſindry manner of ways; ſumtimes it is made upon the gudis and geir of the defender, viz. in actiouns and pleyis of debt, and of movabill gudis, &c.; ſumtimes attachment is maid on ane man's bodie, viz. in "criminal actiounis and cauſis, as "quhen ane dings and hurtis ane "uther for, &c. Item, in all cauſis, "alſweill criminal as civil, gif the de"fender be ſic ane man quha hideth, "and with halderh him malicioufly "and fraudfullie furth of that juriſdic"tion." Practicks v. Attachiamentis.

§ 5. PREVENTION OF CIVIL WRONG GENERAL VIEW.

that is, where the party, though cited, had not anſwered in the king's court, it was uſual to ſecure the defender's appearance in the action, by poinding or diſtraining his goods, and arreſting his perſon.

BUT, inſtead of thoſe harſh methods of ſecuring the defender's appearance, the purſuer has long relied on the certification alone, or "ſting [a]" of the ſummons, certifying the defender of the conſequences of non-appearance; which, in the caſe of his contumacious abſence on the third day, were carried, by a temporary act of James II, in imitation of the Engliſh practice, ſo far as outlawing and putting to the horn [b]. "But our cuſtom, now paſt memory, hath come "to a courſe far nearer material juſtice in civil cauſes, but "the ſecret council and juſticiary ſuſtain no proceſs againſt "abſents, but do only grant certification againſt them, de-"claring them to be fugitives, whereupon they are denoun-"ced, and are to be taken by caption; and then the prin-"cipal cauſe ceaſes till they be brought perſonally to the bar. "But the ſeſſion proceeds to do juſtice againſt parties ab-"ſent, and determine the relevancy of ſummonſes or bills, "and admits inſtructions thereof, or gives terms to prove "the ſame by writ or witneſſes, and decerns, and puts the "decreets to execution; whereby the purſuer enjoys the "profits, till by reduction he be put in *mala fide* by procu-"tion of a clear probation of the contumacious party's "right [c]."

Our preſent practice.

IN the ordinary courſe of the common law of Scotland, diligence at the inſtance of a creditor, againſt the perſon or effects of his debtor, muſt be done in a regular manner, and upon certain *inducie*. Thus, letters of caption to take and impriſon the perſon of the debtor, cannot be iſſued with-

Inducie neceſſary.

[a] "It is the ſting that gives them "efficacy." Stair, p. 579.

[b] 1449, c. 30.

[c] Stair, b. iv, tit. 3, § 31.

a previous charge of horning, the *inducie* of which are in general fifteen days [a].

§ 5. PREVENTION OF CIVIL WRONG —GENERAL VIEW.

THE abbey of Holyroodhouſe, with a certain precinct adjoining to it, is a ſanctuary, within which a debtor taking up his reſidence, and having his name entered in a certain book, kept by a magiſtrate, called the bailie of the abbey, cannot be taken by caption for a civil debt; and ſuppoſe the debtor ſhould be found without the precincts of the ſanctuary upon a *Sunday*, it is a general rule that legal diligence cannot be executed upon that day.

Abbey priſon.

Sanctuary.

The abbey is no ſanctuary againſt the execution of criminal warrants [b]. There is a place of confinement in it called the abbey priſon, where the bailie of the abbey ſecures thoſe who otherwiſe would be impriſoned by the judge ordinary [c].

May one in the abbey be cited as party in an action?

ALTHOUGH the ſanctuary be in general a protection from diligence, it is thought to be clear, that any perſon reſiding there may be ſummoned as a party in any action or ſuit be-

If his evidence be neceſſary as a witneſs.

[a] *Civis enim non ſiſti vel arreſtari poteſt ſed coram ſuo judice conveniri juxta conſuetum judiciorum ordinem debet.* Peccius de jure ſiſtendi, c. 16.

[b] Feb. 10, 1787, Parc and Brown againſt Bennet. Bennet retired to the abbey. Parc and Brown, two of his creditors, made oath before the bailie of the abbey, that they believed he had gone thither to have an opportunity of leaving the kingdom. He was examined before the bailie; and refuſing to give ſecurity for his remaining in Scotland, he was committed to the jail of the abbey.—Thereafter, it was ſtated to the lord ordinary on the bills, that the creditors intended to bring him to trial as a fraudulent bankrupt, and that the abbey jail was not ſufficient for ſecuring him. The lord ordinary granted warrant to remove him to the Canongate priſon. The court affirmed the judgment.

[c] Ibid. *Obſerved on the bench.* The privilege of the ſanctuary would be greatly perverted, if it could be uſed as the means of a bankrupt's eſcaping from Scotland, and thus evading altogether the demands of his creditors. The bailie of the abbey, therefore, with *regard to thoſe* "*who take* "refuge within his juriſdiction, muſt "be warranted in the ſame manner "as the other ordinary judges, to uſe "the neceſſary precautions for pre-"venting wrongs of this ſort."

§ 5. PREVENTION OF CIVIL WRONG —GENERAL VIEW.

fore the court of ſeſſion, or other competent court, by leaving a citation for him in the uſual form.

IN like manner, if his evidence be neceſſary in any cauſe, civil or criminal, depending before a competent court, warrant, as we have already ſeen [a], may be granted for conducting him from Holyroodhouſe and back again to the ſanctuary, under a protection, in the meanwhile from perſonal execution.

BUT beſides the ordinary courſe of legal diligence, there are circumſtances which may intitle the creditor to another remedy, by application to any judge or magiſtrate for a *ſummary warrant* to arreſt the perſon of his debtor, for the purpoſe of obliging him to find caution, or ſurety *judicio ſiſti*, oath being made by the creditor to thoſe circumſtances which found him in the demand.

WHAT ſeems neceſſary to be ſtated upon this ſubject, will occur under one or other of theſe heads, namely, arreſtment within borough, border warrants, arreſtment of ſtrangers to conſtitute a domicile, and *meditatione fugæ* warrants.

§ 6. ARRESTMENT WITHIN BOROUGH.

VI. ANY debtor found within the bounds of a royal borough, where he did not reſide, could, from the earlieſt times, have been arreſted by any burgeſs to whom he was indebted, till he found bail to appear in any action to be brought againſt him at the inſtance of the latter before the borough court. Inconvenient and oppreſſive, even to perſons of entire credit, this borough privilege was at length abridged and regulated by an act in the reign of Charles II [b] ſtatuting and ordaining, "that in time coming no burgeſs, or "other inhabitant of any royal burgh, ſhall have power, or "be permitted, to arreſt any of his majeſty's ſubjects or

[a] See *ſupra*, b. i, c. 2, § 1. [b] Parl. 2, ſeſſ. 3, 1672, c. 8.

§ 6. ARREST-MENT WITHIN BOROUGH.

"this kingdom, who live without the burgh, or force them "to find caution, or imprison them, as said is, for any debt "whatsoever, except allenarly for horse meat or man's meat, "abuilziements, or other merchandice due by strangers to "burgesses, for which they have no other security but their "own compt books; and for which the said privilege of ar-"restment shall only be competent to the merchant, inn-"keeper, or stabler respective from whom the samin was "gotten, and to whom it was originally addebted; so that "in case the samen be assigned to any other burgess, the as-"signey shall not have the benefit of the priviledge. And "siclike, if strangers have given bond, or other security, for "the man's meat, horse meat, abuilziements, or other mer-"chandice, the merchand, innkeeper, or stabler respective, "shall not have the benefit of the foresaid priviledge, but "shall be left to pursue for their respective debts before the "judge ordinar, as accords. And in regard that burghs of "regality and barony do assume the same priviledge, there-"fore his majesty, with advice foresaid, inhibits and dis-"charges the magistrates of these burghs to arrest or incar-"cerate any persons who are not burgesses-inhabitants in "their burgh for any manner of debt: and it is hereby de-"clared, that if any magistrate of any burgh shall presume "to do in the contrair hereof, they shall be punished for "wrongous imprisonment of his majesty's lieges."

Not assignies.

In what boroughs?

Not regalities; nor baronies.

Certification of wrongous imprisonment.

What caution?

Judicio sisti; not *judicatum solvi*.

If the debtor appears, but has obtained letters of advocation.

The caution, or surety, exacted from persons arrested under this statute, is to answer as law will; which now imports only *judicio sisti* [a]; although formerly it appears to have included *judicatum solvi*, or payment of any sum which might be found due by the decree [b].

SUPPOSE one arrested shall find caution to appear in the

[a] Erskine, b. i, tit. 2, § 22.

[b] Bank. vol. i, p. 460; and 20th February 1766, M'Culloch.

§ 6. ARREST-MENT WITHIN BOROUGH.

borough court, but on the day of his appearance intimated letters of advocation, is the cautioner diſcharged of his bond or not? Upon one ſuch occaſion, the magiſtrates, on the idea that they were not at liberty to impriſon the debtor, refuſed to liberate the cautioner till they ſaw the iſſue of the advocation; "but the court of ſeſſion found the cautioner "free; and that the bailies, notwithſtanding of the advo-"cation, might incarcerate the principal party, unleſs he "had found new caution [a]." "This deciſion" (a learned judge remarks) "lord Bankton quotes improperly as an au-"thority to prove that the cautioner is free by preſenting "the debtor at any time during the ſuit. The cautioner is "ſurely bound to produce the debtor at all diets during "the dependence before the inferior court; but when that "dependence ends, he is no longer bound, and the debtor "muſt either find new caution, or is liable to be again in-"carcerated [b]." It is thought, however, that even during the dependence, the ſafeſt way is to require new caution, when the original cautioner, bringing the debtor into court, declines being further bound. The ſtatute, which has always been ſtrictly interpreted, permits the privilege only in the caſe of "merchant compts, ſtabler, cooks, or vintner, "compts, furniſhed out of their ſhops, houſes, or ſtables, "for which there is no bond nor ſubſcribed compt [c]."

VII. THE two kingdoms of England and Scotland being moſtly ſeparated from each other by an ideal line, much intercourſe neceſſarily obtained between the borderers, whoſe

20th Feb. 1766, M'Culloch.

[b] Gardenſtone, MS. v. Bail.

[c] "Law *contra* Dick, 21ſt February "1677. John Law having ſold to "Robert Dick a bargain of bear, "which befel to John as a part of "his father's ſtipend, he having found "Robert Dick in Edinburgh, arreſt-"ed him till he found caution to an-"ſwer as law will for payment of the "victual.

"The lords ſuſpended the bond of "caution *ſimpliciter*, as not falling "within the warrant of the late act "of parliament." Stair's Deciſions, vol. ii, p. 521.

occaſional inroads on each other, form the principal ſubject of the early ſtory and popular poetry of both countries; while the intimate habits wherein they mutually lived during the ſhort intervals of peace, as well as the lenity and equivocal moderation which they ſometimes obſerved towards each other in national wars, ſeem, in thoſe days, to have offended the more zealous politicians, Engliſh as well as Scottiſh [a]. § 7. BORDER WARRANTS

But though this intimacy "counteracted, in many inſtances, the effects of national prejudice [b]," it could not be expected to remove the natural averſion of the creditors in either border to repair as ſuitors to a foreign judicatory.

It had been the practice, therefore, paſt all memory, both on the Scottiſh and Engliſh border, for magiſtrates, on the ſummary application of any creditor, to iſſue their warrant for apprehending any inhabitant of the other ſide found within their juriſdiction, till he gave ſecurity to anſwer there. This was thought a reaſonable and neceſſary expedient; the more eſpecially, ſeeing it is "notourly known, that the Engliſh, on their ſide, keep that courſe with Scottiſhmen in England [c];" and ſir George Macken-

[a] "For" (ſays a Scottiſh writer, on one hand) "there hes been as grit familiaritie, and conventions and makyng of merchandreis, on the boidours this lang tyme betwin Inglis men and Scottis men, bayth in pace and weir, as Scottis men uſis amang theme ſelfis witht in the realme of Scotland; and ſic familiarity has been the cauſe that the kyng of Ingland gat intelligence witht divers gentlemen of Scotland," &c.; "the whilk familiarity" (as he had ſaid before) "is expres contrar the lauis and conſeutudis boytht of Ingland and Scotland." (Complaynt of Scotland, Edin. 1801, p. 164.) And an Engliſh writer, on the other hand, complains of the effect of this familiarity in a particular expedition, which he records. (Dalyell's Fragments, p. 76.

[b] Minſtrelſy of the Scottiſh border, introd. p. 67.

[c] Bell againſt Robertſon, 13th January 1676. "James Bell finding one James Patts, an Engliſhman, in

§ 7. BORDER WARRANTS

zie obſerves, that it was found by the council that the ſame cuſtom had been, and therefore ſhould be, allowed to the ſheriffs and other magiſtrates within boroughs [a].

§ 8. ARREST-MENT OF STRANGERS TO FIX A FORUM.

VIII. THIS law, or cuſtom, of the border, did not, as we have ſeen, ariſe from any peculiar rancour or animoſity between the Scottiſh and Engliſh borderers, but from an allowable predilection for our native courts, and the right every creditor has to obtain juſtice in any juriſdiction where he has chanced to find his debtor; which principle applies equally to all foreigners, whether borderers or not.

Origin of it.

IN the caſe, then, of any ſtranger, who is in the ſituation of owing a debt, and whoſe perſon is found within the territory of Scotland, whether the debt may have been contracted in Scotland or elſewhere, an application for a ſummary warrant, at the inſtance of the creditor, may be authoriſed upon this ſingle ground, that being a ſtranger it is uncertain whether his reſidence may be permanent or not; and therefore it is neceſſary to put him under caution, in order to eſtabliſh *forum competens* againſt him, and to make the juriſdiction effectual.

" Jedburgh, arreſts him there, upon " a bargain betwixt them for ſome " cattle, whereupon James Robert- " ſon became cautioner *judicio ſiſti et* " *judicatum ſolvi*; and thereafter James " Bell obtains a decreet againſt him " before the ſheriff of Roxburgh; he " ſuſpends on this reaſon, that the " Engliſhman was unwarrantably ar- " reſted, &c. contrair to the act of " parliament, 1672, declaring," &c. " *Anſwered*, that this act of parlia- " ment doth only limit the peculiar " privilege of burgh, and bears that " they ſhall not arreſt any ſubject of " this kingdom, which cannot be ex- " tended to Engliſhmen reſiding in " England;" but the charger founds upon the local cuſtom of the border, " by which he offers to prove, that " paſt memory it is the cuſtom of " both ſides of the border that the " inhabitants of either ſide," &c. " *The lords found* the anſwer, upon the " cuſtom of the border, relevant, and " that it was not altered by the act " of parliament; and that the arreſt- " ment by the magiſtrates of Jed- " burgh was by their common au- thority as magiſtrates, and not by their " ſpecial privilege of burgh." Stair's Deciſions.

[a] Obſervations on the act.

§ 8. ARREST-MENT OF STRANGERS TO FIX A FORUM.

By our old law [a], this went the length of *judicatum ſolvi*, as well as *judicio ſiſti*; but afterwards it came to be understood in practice that it ſhould go no farther than *judicio ſiſti*, except in maritime caſes before the court of admiralty [b].

Foreign deeds, how diligence proceeds thereon.

It is to be obſerved, that in caſe of debts contracted abroad, where the obligation is not in the *form* required by our law, though binding by the *jus gentium*, the creditor has not in his power to proceed by horning and caption, as he could do upon a Scottiſh bond, or upon a bill, without applying to a competent court, and having the authority of that court interponed by decree againſt the debtor in terms of the obligation. It is neceſſary, therefore, to ſummon the party to appear, and to uſe the precaution already mentioned in order that the juriſdiction may not be evaded; as diligence cannot go out upon the original ground of debt, but only upon the decree, when recovered.

Does the ſanctuary and Sunday avail ſuch ſtranger?

In this caſe, where a warrant is applied for and obtained, merely with the view of fixing a competent *forum* againſt the debtor, it is thought that as this proceeds without any allegation of criminality, the common rule of law againſt executing legal diligence on Sunday ought to take place, and likewiſe that the privilege of ſanctuary on other days ſhould be maintained; or, in other words, that the ſummary warrant ought not in ſuch a caſe to be allowed, in breach either of the privilege of the ſanctuary, or of the legal exemption from diligence upon Sundays.

A PERSON, though he has taken refuge in the ſanctuary, may, nevertheleſs, as we have ſeen, be ſummoned as a party or ſuitor in any action or ſuit before the court of ſeſſion, or

[a] Balfour, p. 192.

[b] See Dictionary of deciſions, *voce* *forum competens*. (Vol. i, p. 328.) Faculty Deciſions, 7th March 1755, Harris; 21ſt June 1763, Rae.

§ 8. ARREST-MENT OF STRANGERS TO FIX A FORUM.

other competent court, by leaving a citation for him in the uſual form. It is not therefore neceſſary to put him under caution, for the purpoſe of calling him into court; and if it ſhall appear from circumſtances that there is no danger of his changing his abode before decree can be recovered, it ſeems to follow that the extraordinary mode of proceeding by ſummary warrant ſhould not be indulged, as the creditor will, in due time, by obtaining decree, have the ſame acceſs to the regular diligence of the law againſt his debtor ſo ſituated, that he has againſt any other perſon reſident in, and ſubject to, the juriſdiction, who is not in *meditatione fugæ*, but whom the ordinary diligence of the law will not reach, ſo long as he takes the legal benefit of the ſanctuary.

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

IX. BUT, in general, it is ſufficient to give riſe to ſuch an application, that the debtor, whether native or foreigner, is, upon reaſonable grounds, ſuppoſed to be in *meditatione fugæ*, i. e. to have an intention of withdrawing himſelf from Scotland, and conſequently from the juriſdiction of its courts, in order to avoid the diligence of the law againſt him. Upon the creditor's making oath that he believes this to be the caſe, and at the ſame time ſwearing to his debt [a]; ſuch a

[a] A late learned judge ſeems to have been of opinion, that "this warrand ought not to be granted without production of ſome document, or an open account, verified by the creditor's oath. November 1727, Witherſpoon." Gardenſtone, MS. *voce* Bail.

In the index to the Faculty collection, vol. ix, *v. Meditatio fugæ*, it is ſaid, "In obtaining a warrant upon this ground, it is not neceſſary to produce evidence of the debt; but the party applying muſt ſwear to the exiſtence of his claim. Wright againſt Gemmel, Feb. 6, 1782." In that caſe, however, there was more than mere production of an open account. There had been previouſly depending, at the inſtance of Gemmel, an action againſt Wright, who had been one of his factors in America, to oblige him to account for the proceeds of two ſhips and their cargoes, ſaid to be purchaſed by him for the purſuer's behoof, beſides a concluſion for 5000l. as the profits and expences. And during the depend-

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

t may be iſſued, although horning and caption have ne out in the regular form; and the party ſo appre- muſt then either go to priſon, or find caution *de ju- ſi;* i. e. to anſwer to any ſuit which may be brought him at the inſtance of the creditor within a rea- time, e. g. ſix months.

How granted.

magiſtrate ought, in general, before granting war- f impriſonment, to give an order for bringing the efore him, in order that the fact may be examined But ſometimes the warrant is granted *de plano*, upon ditor's making oath as above, without the ceremony previous inquiry; though there are caſes in which, it umed, no magiſtrate would venture to proceed ſo . Much is left to the diſcretion of the judge in the ion of this buſineſs.

Previous examination, if neceſſary.

his action before "the court ion, Gemmel applied to the depute of Lanerk, where t reſided, ſetting forth the then depending; the de- 's having no funds in this y; and his intention ſoon to the ſame; and therefore g, &c. Wright having been before the ſheriff, *acknowledg- truth of the facts ſet forth.*" was granted for impriſoning he found caution. Fac. Coll. ttorney for an Engliſh cre- plied for a *meditatione fugæ* againſt Thorp, an Engliſh- ho had reſided for ſometime ountry: the attorney produ- accepted under that name. lenied the ſubſcription. The eing ſatisfied, *comparatione li-* that the bills were accepted granted the warrant. There- after, Thorp eſcaping from the borough priſon, action of damages was brought againſt the magiſtrates, who, *inter alia*, pleaded that they could not be liable in damages for the eſcape, the impriſonment having been illegal; in reſpect the ſheriff had granted the warrant, without "either an oath of verity of the "debt, or of credulity, as to the "debtor being in *meditatione fugæ*."

Anſwered, 1mo, The magiſtrates could not now plead this after receiving the debtor into their priſon. 2dly, "Without any oath; if circum- "ſtances be ſo glaringly ſuſpicious "as to juſtify his belief, the magi- "ſtrate need not fortify his convic- "tion by the ſuſpicion of any other "man." The court repelled the defences. January 27, 1803; Dean and attorney againſt the magiſtrates of Ayr. Fac. Coll.

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

THE effect of the caution ſo found, is, that the cautioner muſt either preſent his friend at the diets of court [a], when called upon ſo to do, or pay the debt; and when the dependence is cloſed, by a decree obtained and extracted, new caution may be required to keep the perſon of the debtor (if the decreet be againſt him) for a certain time longer within the juriſdiction, till there be an opportunity of obtaining and executing horning and caption againſt him in regular form.

Caution, effect of it.

Is a ſort of criminal charge.

WHERE the warrant is applied for upon an oath of *meditatio fugæ*, it reſolves, in ſome degree, into a criminal charge; and therefore, although the ordinary diligence of the law cannot take place on a Sunday, it has been held that a warrant of this kind may be executed on Sunday [b]. In another caſe [c], a perſon within the ſanctuary was, upon ſuch a charge, committed to the abbey priſon till he ſhould find caution "to remain within the ſanctuary for the ſpace of ſix months." Theſe laſt words are not in the printed report; but, in fact, the order was ſo expreſſed, and there is little doubt that in ſuch a caſe the term may be prolonged by new warrants from time to time to the ſame effect [d].

Sanctuary.

Sunday.

[a] Cowan againſt Aitchiſon and Walker, Nov. 28, 1797. The cautioner did not produce the party when required. The bond was therefore declared to be forfeited. But before the conſtitution of the debt he produced him. By that time, however, the party had obtained a perſonal protection; the cautioner was not reſtored. *Obſerved on the bench.* "It is not clear that the purſuer did "not ſuſtain loſs from the cautioner's "failing to preſent Aitchiſon in Feb. "1796; and at any rate, the bond "being forfeited at ſtrict law, the "cautioner could only be reſtored "by afterwards producing the debtor "or preciſely in the ſame circumſtances." Fac. Coll.

[b] 16th Jan. 1786, Kemp. Fac. Coll.

[c] Park, &c. againſt Bennet, 10th Feb. 1787, See *ſupra*, p. 407.

[d] See alſo Wight againſt Niblie, 9th March 1793.

Niblie retired to the ſanctuary. Alleging certain acts of fraud againſt him, and that he intended to eſcape, ſome of his creditors applied to the court of ſeſſion to deprive him of the benefit of the ſanctuary, or at leaſt to ordain him to find caution *judicio*

party applying for ſuch a warrant cannot make *editatio fugæ*, or (ſuppoſing him to make ſuch oath) appear to the judge thus applied to, in the firſt in- to the court of ſeſſion as a court of review, that no ſufficient cauſe to ſuſpect *meditatio fugæ*, it is that the warrant ought not to be granted; or if ought to be recalled; as the common rules of law be got over, unleſs where evident juſtice and ex- require it; which cannot be ſtated in the caſe al- there being no good ground to ſuppoſe that the in view to diſappoint his creditor by a premature

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

Oath neceſſary,

or other evidence.

If no ground of applying for it.

rt were of opinion, " that
ıſtances of the caſe did
ıt his being depꝛived of
t of the ſanctuary; and
plication againſt him, as
ne fugæ, fell to be made,
inſtance, to the bailie of
the judge ordinary, who,
cauſe for requiring cau-
t, on Niblie's failing to
nfine him to the priſon
ey, as was done in the
re againſt Bennet, 10th
The lords, " as to this
ſed the petition." Fac.

Company againſt Dar-
nd 23d December 1797.
icient ground for apply-
warrant that the debtor
ng the country *without*
ıt, whether he be with-
the purpoſe of diſap-
creditors or in the ordi-
f buſineſs. Feb. 6, 1782,
nſt Gemmel. *Pleaded*,
imited to the caſe where
meditates an eſcape

" from juſtice. Here no ſuch deſign
" is imputed to the defender. His
" acknowledgment amounts to this,
" that having no proſpect of employ-
" ment in this country, he intends
" to take the firſt opportunity of de-
" parting for America in the proſe-
" cution *of his ordinary profeſſion*. An-
" *ſwered*, This argument is quite in-
" conſiſtent with the nature of arreſt-
" ments of this kind. The deciſion
" of the judge muſt be equally ineſ-
" fectual, from whatever cauſe the
" party, againſt whom it is pronoun-
" ced, departs from the territory in
" which he is ſued. Hence Mr. Er-
" ſkine properly explains the expreſ-
" ſion on which a critical argument
" is attempted by the defender, as in-
" cluding every caſe where the debt-
" or means to leave the kingdom."

In the caſe of Scott againſt Sandilands and Manderſon, 7th December 1744, (Falconer, and Dictionary, vol. iii, *v. Meditatio fugæ*) this point ſeems to have been viewed differently.

Lieut. Scott came to reſide in

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

IT is not ſufficient to juſtify ſuch an application, that a debtor is about to remove to a different county. It is the departure from Scotland only, that our law interpoſes, in this extraordinary manner, to prevent [a].

Edinburgh in November 1742. In the following March, Manderſon, merchant there, with whom he had been in the habit of dealing, preſented a petition to the magiſtrates for a warrant to impriſon him as *in meditatio fugæ*, till he found caution *judicio ſiſti et judicatum ſolvi*. It appeared from his admiſſion that he was to join his regiment in England. Warrant, as prayed for, was granted. Action of damages having been brought both againſt Manderſon and againſt the magiſtrates and Sandilands. "The "lord ordinary found the commit- "ment of the purſuer lieut. Scott to "priſon, dated 20th March 1742, "was unwarrantable, not only in re- "ſpect the purſuer was burgeſs and "guild brother of the city of Edin- "burgh, and therefore not, in the "ſenſe of the act 1672, a ſtranger; "but that the commitment *was until* "*he ſhould find caution to make payment* "*to defender Manderſon; whereas had* "*the purſuer been a ſtranger, he ſhould* "*only have been committed in caſe he* "*failed to find caution judicio ſiſti*; and "therefore found the doqueted ac- "count, dated 6th April 1742, and "the bill, of ſame date, granted "while the purſuer was in priſon, to "obtain his liberty, reducible. And "having conſidered the purſuer's "oath, in the proceſs at Manderſon's "inſtance againſt him, found no more "due than 12l. 19s. for which de- "cerned againſt lieut. Scott, and "found lieut. Scott intitled to dam- "mages on account of his commit- "ment aforeſaid, and to the full ex- "pence of this proceſs of reduction."

The court adhered with regard to Manderſon: "they obſerved he had "been in uſe to truſt the purſuer, "and to receive from him partial "payments; that it was not a debt "contracted in the place by a ſtran- "ger; that he had been all winter in "Edinburgh, where he had a houſe "and family; and that he owned he "was going to the regiment, which "was no *fuga*."

With regard to the bailie, whom they inclined to abſoilzie, it being alleged for the purſuer that he was not informed he might avoid going to priſon by finding caution; it was remitted to the ordinary to inquire into that fact. But this cannot be conſidered as a deciſion, that a debtor may not be prevented from leaving the country without paying his debts, or finding ſecurity to anſwer in court for the ſame. It was not only a harſh exerciſe of right on the part of the creditor, but he had alſo conducted himſelf illegally by exacting caution *judicatum ſolvi*; which ground the interlocutor expreſsly notices.

[a] Laing againſt Watſon, 1789. Laing, who was in bankrupt circumſtances, had diſpoſed of moſt of his effects in Brechin, the place of his reſidence, in the view of removing to another part of the country.

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

ch warrants may be applied for againſt a debtor in *me-* *ne fugæ*, though he be poſſeſſed of heritable property in ountry. "A debtor's being owner of a land eſtate s not protect his perſon from diligence, it being op- al to his creditors which diligence to uſe [a]."

Departure from the country the evil provided againſt.

s debtor's departure from the country is the peculiar d inconvenience provided againſt by this legal reme- has therefore been doubted, whether the debtor, who en arreſted on a *meditatione fugæ* warrant, and is ed on caution *judicio ſiſti*, can retire to the ſanctuary the commencement of the action, without occaſion- forfeiture of the bond of caution. This point, which n one occaſion been debated, though not decided [b],

Can one under caution *judicio ſiſti* retire to the ſanctuary?

was no reaſon to ſuſpect he quit Scotland. Watſon ap- Mollyſon (provoſt of the , and a juſtice of the peace), arrant to impriſon Laing; he was in *meditatione fugæ*, nded ſoon to leave the king- *at leaſt that part of it*; and th thereto.

leſire of the petition appeared been granted without taking s oath as to the amount of ; without any previous exa- of Laing, and without any n as to the time within which ion was to be commenced him. Laing was confined to or ſeveral months. No pro- ſures, however, were taken for ſome time in order to ob- releaſe; and it even appear- was inclined to prolong his priſon to increaſe his claim of s. "The lords" found "the "defenders liable to the purſuer in "damages and expences."

The learned reporter remarks, "the court in general obſerved, that "although perhaps no one of the "particulars would have been ſuffi- "cient to ſubject him, his conduct "had, on the whole, been ſo incau- "tious, as, in a proceeding of this "ſort, juſtly to create an obligation "to make up the loſs." Fac. Coll.

[a] Obſervation from the bench in the caſe.—Dr. Heron againſt Captain Dickſon, Dec. 16, 1773. Fac. Coll. In that caſe an action of damages had been brought, chiefly on the ground that the ſummary warrant was improperly applied for, the debtor having a land eſtate in Scotland. The court "aſſoilzied the defender from "the proceſs of oppreſſion."

[b] Arrot againſt the Magiſtrates of Edinburgh, 17

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

lately much divided the bench[a]; it appearing to ſome of the judges unreaſonable, that the privilege of ſanctuary

[a] Taſker againſt Mercer, Feb. 27, 1802.

Cautio de judicio ſiſti.—The cautioner forfeits his bond, unleſs he produce the perſon of the debtor in ſuch a ſtate as he may be liable to be attached by diligence.

Mrs. Suſanna Frances Taſker raiſed an action for payment of a debt againſt Richard Mercer, Eſq. an Iriſh gentleman, reſiding in Edinburgh, and preſented a petition to the magiſtrates of Edinburgh, ſtating that he was *in meditatione fugæ*, and praying that he ſhould be impriſoned until he found caution *de judicio ſiſti*. The magiſtrates refuſed the petition; but, on a bill of advocation, the lord ordinary remitted the cauſe to them, inſtructing them to alter their interlocutor, and to grant warrant to impriſon Mr. Mercer until he found caution for ſix months; and the court adhered to the judgment of the lord ordinary, finding that the caution ſhould extend to the action already brought, as well as to any that might be brought within that period.

Accordingly Mr. Richard Hotchkis, writer to the ſignet, judicially enacted himſelf, in the uſual terms as cautioner, under penalty of payment of the debt.

An action for this purpoſe was immediately raiſed; in the courſe of which the purſuer called upon the cautioner to produce the principal debtor, in terms of the bond. But, in the mean time, Mercer retired to the ſanctuary, and preſented a petition in his own name, and in that of his cautioner, for a perſonal protection. The cautioner contended that he was intitled to a warrant to bring the debtor into court, as required by the creditors; and the debtor maintained, that as he had done nothing to forfeit the benefit of the ſanctuary, his perſon ſhould be protected from the diligence of his creditors, both on his way to the court, and alſo on his return to the abbey.

The court, by a conſiderable majority, "*found*, that the defender Richard Mercer, by retiring to the abbey, could not liberate himſelf or his cautioner Mr. Hotchkis from the effect of the ſecurity already granted to produce him in court, in terms of the bond of caution *judicio ſiſti* at the purſuer's inſtance; and therefore, unleſs he is produced accordingly, the penalty in the bond muſt be incurred: and that in the preſent queſtion between the purſuer and the ſaid Richard Mercer and his cautioner, no regard can be paid to the circumſtance of Mr. Mercer's being booked in the abbey as aforeſaid: remit to the lord ordinary to grant warrant, at the inſtance of Mr. Hotchkis, to bring the perſon of the ſaid Richard Mercer from the ſanctuary in to court, for the purpoſe mentioned in the petition given into court by him; but to grant no protection againſt the further diligence proceeding at the inſtance of the purſuers; and, on the other hand, to grant the prayer of the petition preſented to his lordſhip by the purſuer for the apprehending the ſaid Richard Mercer, in ſ

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

ſhould be affected by any ſuch circumſtances. A debtor, under caution *judicio ſiſti*, might, it was ſaid, retire to the abbey, juſt as he could ſucceed to a peerage, or acquire a ſeat in parliament, without a forfeiture of the bond of caution, which was intended ſolely to guard againſt his departure from the country.

If he ſucceeds a peerage.

THE court, however, did not go into this reaſoning; but, under the common ſtyle of bonds of caution, "to preſent "the debtor in court," thought the creditor intitled to have his debtor preſented to him, as liable to diligence as at his firſt apprehenſion, and to recur againſt the cautioner, if the debtor does not appear perſonally, whether he be within the kingdom or without it, or if he has done any thing in the interval to render his perſon leſs ſubject to legal diligence.

BUT this is peculiar to the creditor to whom he has found ſuch caution. He may retire to the ſanctuary, to the effect of avoiding the diligence of his other creditors. Accordingly, in this ſame caſe, the court had no difficulty in allowing the debtor a protection to ſecure him againſt the diligence of his other creditors, in going to the court, and in returning again to the ſanctuary.

May retire to the ſanctuary as to other creditors.

ANY one juſtice of peace is competent to grant theſe warrants, juſt as he can grant a warrant to apprehend a felon or breaker of the peace. "Any judge ordinary, or even par-"ties, may ſeize perſons for public riots, or their own debt-

By whom granted.

"terms therein ſpecified; but find it "unneceſſary and incompetent, *in* "*hoc ſtatu*, to determine any queſtion "between the ſaid Richard Mercer "and his other creditors, who are no "parties to this proceeding, reſerv-"ing to him to claim the privilege "of the ſanctuary againſt them, if he "ſhall be ſo adviſed, and to them all "objections thereto, as accords."

§ 9. SUMMARY WARRANT —MEDITATIONE FUGÆ.

" ors *in their eſcape out of the kingdom*, or in clear evidence " of their preſent going about the ſame [a]." Any inferior magiſtrate can grant ſuch warrants [b]. In a caſe mentioned above, the arreſtment of a ſtranger, in virtue of the warrant of a baron-bailie, was ſuſtained [c]. Theſe warrants are alſo granted occaſionally by the ſupreme judicatures [d].

Judge ordinary.

§ 10. SUMMARY WARRANTS

LORD BANKTON ſays, " this remedy of ſummary warrant " will not be granted to a foreigner accidentally in this " country againſt another ſtranger likewiſe occaſionally " here, in relation to debts contracted abroad: it is for the

[a] Stair, book iv, tit. 47, § 23.

[b] June 1727, Barrowfield. The lords were unanimous, that upon application to any inferior magiſtrate, a debtor, *ſub meditatione fugæ*, may be ſummarily impriſoned, though it had been previouſly found that a baron-bailie could not ſummarily impriſon. Stair, 18th January 1678, and Dictionary, *voce Meditatione fugæ* warrants.

[c] 20th July 1705, Potts againſt Mitchelſon. See Forbes and Fountainhall.

The ſtatute, 20th Geo. II, cap. 43, commonly called the Juriſdiction act, declares, " that no baron ſhall have, " exerciſe, or enjoy, any juriſdiction " in any criminal cauſe whatſoever, " other than aſſaults, batteries, and " ſmaller crimes." But a magiſtrate may be competent to grant the warrant, who is not competent to try the crime. The caution found, is, to appear, not before the magiſtrate who may be applied to in the ſpur of the moment to grant the warrant, but before any competent civil court.

In like manner, juſtices of peace, though incompetent in moſt civil cauſes, grant thoſe warrants.

[d] 11th March 1795. Decree for a random ſum of 1000l. had been pronounced againſt a widow at the inſtance of her huſband's heir, who alleged that ſhe had uſed improper means, during her huſband's indiſpoſition, to get all his means into her poſſeſſion. As ſhe did not, when examined, give any ſatisfactory account of the money, the purſuer prayed the court to grant a warrant for contumacy; but ſome doubts ariſing as to the competency of this ſtep, the party, at the ſuggeſtion of the court, added to his petition a prayer, to have her ſecured as in *meditatione fugæ*. One of the judges entertained ſome doubt whether this would not proceed more properly before the ſheriff, but the court in general thought the application competent, as the parties were before them at any rate; and the purſuer being ſworn at the foot of the table, the court granted the warrant of incarceration, *meditatione fugæ*.

§ 10. SUMMARY WARRANTS —IF TO ONE FOREIGNER AGAINST ANOTHER.

" neceſſity of the thing, and to get juſtice eaſily done to the " people of each country that this law and cuſtom is intro- " duced: and therefore it ought not to be extended in be- " half of one ſtranger againſt another foreigner, who muſt " apply to the judges of the place where another reſides; " and to do otherwiſe would be a great diſcouragement to " commerce and freedom of trade; and for the ſame rea- " ſon ſummary arreſtment ought not to be allowed of ſuch " ſtranger's effects at the ſuit of another ſtranger, even *ju-* " *riſdictionis fundandæ cauſa*, till he find ſuch caution in or- " der to found an action; upon the dependence of which a " regular arreſtment may be uſed, unleſs it is for a debt " contracted here; in which ſenſe alone I can take the caſe " collected by Fountainhall to the above effect [a].

Lord Bankton's opinion.

No ſuch excluſion of foreign creditors was ſanctioned by the authority of lord Stair, nor has been repeated by Mr. Erſkine. The obſervation indeed ſeems equally irreconcilable to the deciſions of our courts, and the principles of general law.

1ſt, Strangers may be arreſted.

For, *firſt*, lord Bankton himſelf admits, that, as ſtated above, ſtrangers here tranſiently, may on that ground alone

[a] February 1684, Arnold. " Mr. " Scoular, factor in Rouen, being " deceaſed, Thomas Young, mer- " chant in Edinburgh, being creditor " to him, did, by a ſpecial deliver- " ance of the lords upon a bill, arreſt " all his effects and monies owing to " him in Scotland. Monſieur Ar- " nauld, who was partner with Scou- " lar, offers to draw his part of the " effects out of Scotland: Thomas " Young oppoſed it."—" The lords " found, after a great debate, that, " before he can remove his money, " he behoved to find Thomas Young " caution *judicio ſiſti et judicatum ſolvi* " in Scotland, for what *ex conventu* he " and Scoular, his conjunct, ſhould " be found debtors to him."—— " Though, in ſtrict law, *actor ſequitur* " *forum rei*; and Young, if he had " ought to crave againſt Arnauld, " ſhould purſue him in France; but " *tutius eſt incumbere rei quam perſonæ*."

§ 10. SUMMARY WARRANTS —IF TO ONE FOREIGNER AGAINST ANOTHER.

be arreſted by any inhabitant of the country. S indeed, are the natural and primary objects of t rants, which are only by analogy extended to n who are ſuſpected of *meditatio fugæ*.

THUS lord Bankton, after ſtating the general princ ſtrangers, ſays, "*the ſame neceſſity* authoriſes ſumn "rants againſt inhabitants who are *in meditatione f* "ſuſpected to be upon flight[a]." In like manner, denſtone obſerves, "*upon the ſame principle* ſummary "are authoriſed to commit inhabitants of this cou "are *in meditatione fugæ*[b]." And the ſame thing a obtain in thoſe parts of the continent where the n ty of ſmall ſtates, independent of each other, bro branch of juriſprudence to early maturity[c].

ACCORDINGLY, in a variety of caſes, very keenly debated, nothing appears to have been thought qu but the nature of the caution which ſtrangers ſho whether *judicatum ſolvi*, or only *judicio ſiſti*[d].

A STRANGER may be able to ſatisfy the court th no intention of quitting the country; or, in oth may, by argument or evidence, remove the natural tion of his intended departure which lies againſ ſtranger. This may have been one ground of th in the caſe of Lechmere, which the reporter thus i

[a] Ibid.

[b] MS. *voce* Bail.

[c] This we learn from an author, who treats the ſubject expreſsly.—*Igitur qui bona vel perſonam alicuius ſiſtere vel arreſtare intendit, obſervare debet principio quod non niſi forenſis et extraneus ſiſti vel arreſtari poſſit.* Peccius De jure ſiſtendi, c. 1 he proceeds to explain in the ſame procedure may b againſt a citizen.

[d] Rae againſt Bellamy 1763; Harris againſt Lid March 1755. Fac. Coll.

§ 10. SUMMARY WARRANTS —IF TO ONE FOREIGNER AGAINST ANOTHER.

"A WARRANT may be iſſued by one foreigner againſt another as *in meditatione fugæ*, but not unleſs the judge be *ſatisfied there are reaſonable grounds for the application*[a]."

[a] June 3, 1797, Scudamore and his attornies againſt Lechmere.

Meditatio fugæ.—A warrant may be iſſued at the inſtance of one foreigner againſt another, as *in meditatione fugæ*, but not unleſs the judge be ſatisfied that there are reaſonable grounds for the application.

Edmund Lechmere, an Engliſhman, embarraſſed in his circumſtances, came to Scotland, and hired lodgings for a year, in the abbey of Holyroodhouſe. After he had been ten or eleven months there, a petition was preſented to the ſheriff-depute of Edinburgh, in the name of Henry Blackford Scudamore, of the county of Somerſet, and his attornies in Scotland, ſtating, that Mr. Lechmere owed a large ſum by bond and ſtated account to Scudamore: that Mr. Lechmere had left England, in order to avoid the diligence of his creditors; and that "the petitioners "have good reaſon to believe, and "do verily believe," that he will likewiſe leave Scotland, "in caſe any "intimation or notice ſhall be given "to him of the intention of the pe"titioners to proceed or purſue any "ſteps againſt him for the recovery "of the aforeſaid debt." The petitioners therefore prayed, that Lechmere ſhould be impriſoned till he ſhould find caution *judicio ſiſti*, in any action for the debt to be brought againſt him within ſix months. Along with the petition there were produced copies of the bond and ſtated account, an affidavit by Scudamore before the depute mayor of Bath, in terms of the petition, and a mandate to his two attornies in Scotland. One of the attornies made oath before the ſheriff, "that the deponent is cre"dibly informed, and believes in his "conſcience, that the within-deſign"ed Edmund Lechmere is *in medita*"*tione fugæ*, and about to leave Bri"tain, in order to avoid payment of "the debt mentioned in the peti"tion." The ſheriff ordered Lechmere to be brought before him for examination. Mr. Lechmere having been accordingly apprehended *without* the precincts of the abbey, he, in his declaration before the ſheriff, admitted the authenticity of the documents of debt produced, and the ſubſiſtence of the debt; but ſaid he had good defences againſt payment of part of it, and denied any intention of leaving Scotland. The ſheriff granted the warrant; but, "in re"ſpect of the magnitude and nicety "of the caſe," ſuperſeded the execution of it for a few days, that Mr. Lechmere might, if ſo adviſed, apply to the court of ſeſſion; and, in the mean time, authoriſed the officers of court to keep him in ſafe cuſtody. A bill of advocation, with the whole proceedings, was ordered to be printed, and was reported by the lord ordinary on the bills.

Pleaded for Lechmere—A warrant againſt a party, as *in meditatione fugæ*, is not competent at the inſtance of one foreigner againſt another for debts contracted abroad. (6th De-

§ 10. SUMMARY WARRANTS—IF TO ONE FOREIGNER AGAINST ANOTHER.

No other ground at leaſt can be diſcovered on which it can be reconciled with caſes decided both before and after it; particularly thoſe of Jouett and attorney againſt Wooley and Maidmant [a], and Taſker againſt Mercer [b].

Point decided by the court in the caſe of Wooley and Maidment.

THE caſe of Wooley and Maidment had occurred the ſeſſion before that of Lechmere. The court, in that caſe, very maturely conſidered, and deliberately decided, the abſtract point. There, no doubt, the original application had ſtated that Wooley and Maidment were ſwindlers, and craved a ſearch warrant for diſcovering if they had any of the creditor's goods along with them; but none ſuch were diſcovered. The allegations were not authenticated. Wooley and

cember 1775, Scot againſt Carmichael.) Beſides, the party applying ought, in addition to his oath, that he believes the debtor means to leave the kingdom, to exhibit ſome reaſonable grounds for his ſuſpicion. (20th December 1787 Laing againſt Watſon and Molliſon); and none ſuch have been offered in the preſent caſe.

Anſwered—There ſeems no good ground for a diſtinction in this particular in favour of foreigners. Indeed, the law in ſome degree conſiders foreigners to be always *in meditatione fugæ*, and therefore, in the admiralty court, caution is required from them, not only *judicio ſiſti*, but *judicatum ſolvi*. In this caſe the whole circumſtances ſupport the oath.

Obſerved on the bench—The court were much divided in opinion in the caſe of Scot againſt Carmichael, which, at any rate, from the period Mr. Lechmere has reſided in this country, was very different from the preſent. But as a warrant of this fort is an extraordinary remedy, it ought in no caſe to be granted *niſi cauſâ cognitâ*. By this, however, it is not meant, that the judge, before granting it, ought to allow a proof of the oppoſite averments of parties; but that the creditor, in addition to his oath of credulity, ſhould ſtate ſome probable reaſon for ſuſpecting that the debtor means to leave the kingdom; and the queſtion is, whether any ſuch appears in the preſent caſe.

A majority of the judges thought, that as Mr. Lechmere had come to Scotland to have the benefit of the ſanctuary, where he had hired lodgings by the year, there was no reaſon to ſuppoſe he meant to deprive himſelf of that benefit by leaving the kingdom.

The lords remitted to the lord ordinary, to remit to the ſheriff, "with "inſtructions to ſet the advocator at "liberty." Fac. Coll.

[a] 1796. November.

[b] 27th February 1802. Fac. Coll.

Maidment, on the other hand, maintained, that they had come to Scotland on a pleaſure jaunt for the benefit of Mrs. Maidment's health. On that ſtate of the fact the creditor joined iſſue with them as to the law, viz. his right to a ſummary warrant againſt them *as ſtrangers here tranſiently, ſine animo remanendi*, till they found caution *judicio ſiſti*. This abſtract point alone was conſidered and decided. The court, indeed, muſt have deviated, no leſs from their uniform practice, than from obvious propriety, had they paid any regard to looſe allegations on either ſide, unſupported by evidence. The deciſion, though pronounced by a very great majority, was not unanimous. A learned judge even maintained, that the doctrine, that any foreigner, however reſponſible at home, could be ſummarily apprehended the moment he ſets a foot in Scotland, till he found caution to anſwer in our courts, would not only be contrary to the intereſt of trade and manufactures, but a reproach on the law of the country, and an occaſion of much hardſhip and inconveniency. However, the court in general viewed the law as above laid down. In particular, the late lord-juſtice-clerk Macqueen expreſſed himſelf very decidedly in favour of the judgment of the court, which, moreover, has ſince been farther ſanctioned by the deciſion in the caſe of Taſker.

§ 10. SUMMARY WARRANTS—IF TO ONE FOREIGNER AGAINST ANOTHER.

SECONDLY.—If, then, a foreigner, here tranſiently, may *be arreſted*, it ſeems to follow neceſſarily that he may *arreſt*. If our courts iſſue warrants *againſt* him, they muſt do ſo equally at his *inſtance*. Even at an early period our courts made no ſuch invidious diſtinction betwixt *foreign* and *native* creditors. 2dly, To a foreigner.

THUS "arreſtment was granted by the lords at the inſtance of an Engliſhman upon the goods of another, neither of them being in the country *animo remanendi*, founded upon bonds made in England, not bearing any condi-

§ 10. SUMMARY WARRANTS —IF TO ONE FOREIGNER AGAINST ANOTHER?

"tion of payment to be made in Scotland [a]." This case lates to the arreſtment of goods; but it depends upon ſame principle with the other; and lord Bankton's opin goes to both equally. In either caſe, it is in view to a juriſdiction. Accordingly, at a very early period it was cided, that a ſtranger, as well as a native, might arreſt reigner in any of the boroughs [b]. And in the different already mentioned [c], the purſuers, as well as defenders, foreigners; which train of deciſions reſts on this ſound principle, that judges do not diſpenſe juſtice as a matter of favour, but whenever they have juriſdiction are bound to exercise it at the motion of any perſon, whether foreigner or native, who has it in his power to fix a *forum*, by ſecuring the defender's perſon or property to render the decree effectual.

Summary warrants ſecurity to appear in his native courts?

THE ſame principle affords an anſwer to another queſtion that ſometimes ariſes where ſummary warrants are applied for againſt foreigners, namely, whether it is not enough to find caution to anſwer in their native courts. The court of ſeſſion ſeems to have decided one caſe upon this principle but it was a very particular caſe. The ſtranger, an Engliſhman, when arreſted in Edinburgh, on the *meditatione fugæ* warrant, had taken his paſſage at Leith for Newcaſtle, in order to return home to Morpeth, in Northumberland, where he had an eſtabliſhed buſineſs, which his wife was conducting in his abſence. But this deciſion, ſtrong as the circumſtances were, met at the time with much oppoſition and has not been approved of ſince. Accordingly, the court did not think itſelf at liberty to pay any regard to propoſals repeatedly made by Meſſrs. Wooley and Maidment to ſi

[a] Haddington, Dec. 1610; Elveis *contra* Vernon. Dict. vol. i, p. 329.

[b] Robertſon againſt Bell, 13th January 1676. Goſford.

[c] Rae againſt Bellamie, Harris againſt Lidderdale, Jouett againſt Wooley and Maidment, Taſker againſt Mercer.

[d] Scot againſt Carmichael, 6th December 1775. Fac. Coll.

caution to return to England, or to allow themſelves to be conducted thither under the charge of one of the macers or officers of court. The creditors did not agree to thoſe propoſals; and the court was of opinion, that however equitable the propoſals might appear, they could not compel the creditors to cloſe with them. The creditors had taken the trouble to fix a *forum* here againſt their debtors; and the court expreſſed themſelves very clearly of opinion that it would be going quite out of the ſphere of judges to deprive them of that (whether real or imaginary) benefit, and to enter into any ſuch tranſaction as propoſed.

§ 10. SUMMARY WARRANTS

CHAP. III.

Of Remedial Juſtice, or the Powers and Duties of Magiſtrates when the Peace has been broken.

§ 1. GENERAL VIEW.

I. WHEN the peace is broken, there are, as we have already ſeen, certain duties incumbent on magiſtrates, conſtables, and indeed on all the lieges, who are bound to uſe their reſpective endeavours for allaying any diſturbance that has taken place, or preventing the accompliſhment of any attempt to commit robbery, murder, or other unlawful act. Thoſe duties, and particularly the extraordinary juriſdiction for that purpoſe conferred on magiſtrates by the riot act, have been already conſidered. Beſides quelling the diſturbance, or preventing the accompliſhment of ſuch deſign, it is farther neceſſary, by the puniſhment of the delinquent, to deter him and others from any repetition of the like attempt. The ſecuring delinquents for this purpoſe, taking their precognitions, and other acts preparatory to a trial, particularly belong to juſtices of the peace and other inferior magiſtrates, whoſe extenſive and important juriſdiction in theſe matters, we now proceed to conſider in ſeparate ſections.

II. Search-warrants, though little noticed in our books, occur daily in practice, and often create danger, as well as difficulty, to the magiſtrate, who is not verſant in buſineſs. § 2. SEARCH-WARRANTS

REGULARLY, a ſearch-warrant is granted upon the procurator-fiſcal's application, or the private party's, with the *concourſe* of the procurator-fiſcal. However ſuch concurrence is not indiſpenſible. That officer may not be on the ſpot; he may reſide in a diſtant part of the county, or be from home at the time; and thoſe affairs do not admit of delay. Though the ſearch-warrant may be granted on the party's ſigned information, yet it may be proper to take his oath as to the reality and grounds of his ſuſpicion, and the particular places which he wiſhes to be ſearched. This precaution is particularly adviſeable, if the party himſelf does not ſubſcribe the application, but his man of buſineſs only. However, though extremely proper, it cannot, in our practice, be ſaid to be indiſpenſible, as it ſeems to be in the Engliſh [a]. Upon what evidence is it granted?

ANY one juſtice of peace, or other magiſtrate, may grant a warrant to ſearch. The warrant ought to be dated, and muſt be ſubſcribed by the magiſtrate in whoſe name it runs. It ſhould alſo bear his deſignation, and the county, as well as ſpecial cauſe for which it is given; which formalities, however, excepting only the magiſtrate's ſubſcription, cannot be ſaid to be abſolutely indiſpenſible to the validity of the warrant [b]. Who may grant. Form of the warrant.

THE warrant muſt be particular as to the place or places to be ſearched. General warrants to ſearch all ſuſpected places, are reprobated both in the Engliſh and Scottiſh law. Thus lord chief-juſtice Hale ſays, a general warrant to ſearch for felonies or ſtolen goods is not good [c].

[a] Hume, vol. iii, p. 122.
[b] Ibid.
[c] H. Pl. 93.

§ 2. SEARCH-WARRANT.

HAWKINS ſays, "I do not find any good authority that a "juſtice can juſtify ſending a general warrant to ſearch all "ſuſpected houſes in general for ſtolen goods, becauſe ſuch "warrant ſeems to be illegal in the very face of it; for it "would be extremely hard to leave it to the diſcretion of a "common officer to arreſt what perſons, and ſearch what "houſes, he thinks fit; and if a juſtice cannot legally grant "a blank warrant for the arreſt of a ſingle perſon, leaving "it to the party to fill it up, ſurely he cannot grant ſuch "general warrant, which might have the effect of an hun-"dred blank warrants [a]."

AGAIN, lord chief-juſtice Hale expreſſes himſelf thus: "I "do take it, that a general warrant to ſearch in all ſuſpect-"ed places is not good; but only to ſearch in ſuch particu-"lar places, where the party aſſigns, before the juſtice, his "ſuſpicion, and the probable cauſe thereof; for theſe war-"rants are judicial acts, and muſt be granted upon exami-"nation of the fact [b]."

When granted before the crime be committed.

AND therefore, he ſays, thoſe general warrants dormant, which are made before any felony committed, are not juſti-fiable; for it makes the party to be in effect the judge; and therefore ſearches made by pretence of ſuch general war-rants, give no more power to the officer or party, than what they may have by law without them [c].

Warrant to break open doors.

A SEARCH-WARRANT to break open the doors of any man's houſe to ſearch for a felon, or for ſtolen goods, cannot be granted upon a bare ſurmiſe; and it would be full of in-convenience, that it ſhould be in the power of any juſtice of the peace, being a judge of record, upon a bare ſuggeſtion, to break the houſe of any perſon, of what ſtate, quality, or de-gree, ſoever, either on the day or night upon ſuch ſurmiſes [d].

[a] 2 Hawk. 82, 84. Burn, Search-warrant.

[b] Hale's Hiſt. 150. Burn.

[c] Ibid.

[d] Coke, 4 Inſt. 1777. Burn.

UT, in caſe of a complaint and oath made, that ſtolen § 2. SEARCH-WARRANT.
ls are ſuſpected to be in ſuch houſe, the juſtice, when he
earned the cauſe of ſuſpicion, may grant a warrant to
h in thoſe ſuſpected places mentioned in his warrant;
to attach the goods, and the party in whoſe cuſtody
are found, and bring them before him, or ſome other
, that he may give an account how they came into his
ſion; and farther, abide the order of law [a].

ID by 22 Geo. III, c. 58, on complaint made on oath
e one juſtice, that there is reaſon to ſuſpect that ſtolen Search, in virtue of 22 Geo. III, c. 58.
s are knowingly concealed in any houſe or place, he
by his warrant, cauſe ſuch houſe or place to be ſearch-
the day-time; and the perſon knowingly concealing
ſtolen goods, or in whoſe cuſtody the ſame ſhall be
d, he being privy thereto, ſhall be deemed guilty of a
emeanour, and may be brought before any juſtice; and
nviction, may be puniſhed by fine, impriſonment, or
ping, as the quarter ſeſſions, (who are empowered to
uch offenders) or any other court before whom he ſhall
ied, ſhall think fit to inflict.

ARCH-WARRANTS, by particular ſtatute, in the caſe of
eymen abſtracting materials of their work, will fall
properly to be noticed afterwards.

HE warrant ought to be directed to the conſtable, or To whom directed?
r known officer, and not to any private perſon, though
party may very properly accompany the officer, and aſſiſt,
uſe he knows his own goods [b].

VITH reſpect to the time of granting ſearch-warrants, Search, is it in the day-time only?

[a] Hales' Hiſt. 113, 150. Burn, Search-warrant.

[b] 2 Hales' Hiſt. 151. Burn, *ad verb.*

§ 2. SEARCH-WARRANT.

lord-chief-juſtice Hale obſerves, that it is convenient ſ warrants do require the ſearch to be made in the day-ti and though, his lordſhip adds [a], "I will not affirm, that th "are unlawful without that reſtriction, yet they are ver "inconvenient without it; for many times, under pretence "of ſearches made in the night, robberies and burglaries "have been committed, and at beſt it creates great diſturb- "ances." However, in caſe not of probable ſuſpicion only, but of poſitive proof, it is ſometimes right to execute the warrant in the night-time, leſt the offenders may have removed with their goods before morning [b].

What muſt the juſtice of peace do with the goods recovered?

ON the return of the warrant executed, if it appear the goods were not ſtolen, they are to be reſtored to the poſſeſſor: if it appear they were ſtolen, they are not to be delivered to the proprietor, but depoſited in the hands of the ſheriff or conſtable; in order that the party robbed may proceed, by indicting and convicting the offender, to have reſtitution [c].

If ſtolen, but not by the party?

IF the party, in whoſe cuſtody the goods are found, be ſuſpected to have been either guilty of the theft, or in the knowledge of the goods being ſtolen, he muſt be committed for trial; in the one caſe as thief, in the other as reſetter. If he appear not to have been in the knowledge that the goods were ſtolen, he cannot be committed for trial; but may be bound over as a witneſs againſt the perſon from whom he got them. If it appear the goods were not ſtolen, he muſt be diſcharged [d].

THE mode of executing the warrant, and When doors

[a] 2 Hales' Hiſt. 151. Burn, *ad vocem.*

[b] Barl. *voce* Search-warrant. Burns, *ad vocem.*

[c] 2 Hales' Hiſt. 151. Burn, *ad vocem.*

[d] 2 Hales' Hiſt. 152. Burn, *ad vocem.*

r not be broken open, have been already conſi- § 2. SEARCH-WARRANT.

s very important ſubject of the taking the perſons § 3. ARREST.
nts, in order that ſecurity may be had for their
to the charge that ſtands againſt them, has al-
; in part, under our view, in conſidering the du-
ſtables. Here, however, it again occurs as the
f conſtables and other officers excluſively, but of
themſelves, who, beſides their peculiar powers,
of their officers alſo; and moreover of private in-
kewiſe, whoſe aid they may require, or who, with-
der, or the preſence of any magiſtrate, may have
vitneſſes of the fact. An arreſt thus may take
r with or without a warrant.

lice of peace, ſheriff, or other magiſtrate, even a —WITHOUT A WARRANT.
:[b], ſeeing a felony, a riot, or other breach of
committed in his preſence, or having certain in-
from thoſe who witneſſed it, may, in his own Magiſtrates
rehend the offender. The powers of conſtables, Officers.
tors of the peace, to arreſt without any warrant,
already explained. The duty and power of pri-
ns cannot be laid down with ſuch preciſion and
s could be wiſhed. However, we may ſafely ſtate,
e caſe of any felony, ſuch as murder, robbery, Private individuals.
ngerous wound, private individuals who happen to
or have certain information of the crime from
ſaw it committed, may, and indeed are bound, to
offenders, who might otherwiſe eſcape[c]. In Eng- Engliſh law.
l perſons who are preſent, when a felony is com-
or dangerous wound given, are bound to appre-

. 8; § 3 and 5.
ers of a baron-bailie are
10 Geo. II, only to the
eff.ct of trial and ſentence. Hume, vol. iii, p. 121.
[c] Ibid. p. 117.

§ 3. ARREST —WITHOUT A WARRANT.

" hend the offender, on pain of being fined and i
" for their neglect [a]."

" WHAT may be the privilege of a private per
" probable ſuſpicion only of a felony, or inform
" from others, and eſpecially in any purſuit whic
" carry on out of the preſence of his informer
" more delicate inquiry, and one in which I wi
" ture to affirm any thing in his favour, having
" wards it from either the authority of books or
" ſions of the court [b]."

Private individuals, can they arreſt affrayer and petty delinquents.

IN the caſe, again, of an affray, or other leſſer
cy, private perſons do not ſeem to enjoy the ſam
Without any warrant, they may interpoſe to qu
reſtrain the offenders, that the king's peace may
but, after the affray is ended, they cannot, witho
rant, arreſt them [c]. Indeed, this arreſting, w
warrant or order, and in virtue merely of that c
of the peace, which is intruſted to every liege ſub
ways rather of neceſſity than choice. The ſanct
authority of the magiſtrate is deſirable, where
be had, without affording the offender an oppo
eſcaping.

—BY A VERBAL ORDER.

THE authority of the magiſtrate is either give
or by a regular warrant in writing. The verbal or
tated by the ſame neceſſity that juſtifies the inter
officers and private perſons of their own auth
takes place on ſimilar emergencies. Any juſtice
or other magiſtrate, may verbally command any on
another, who has been guilty of a felony, or bre

[a] 2 Hawkins, 74. Burn, v. Arreſt.
[b] Hume, ibid.
[c] Coke, 2 Inſt. 52. Arreſt, § 3. Hume, vol. ii

n his preſence; which command is a good warrant writing [a]. "Nay, though the deed have not been under the eye of the magiſtrate, yet ſtill, if inſtant plaint be made to him of a murder, robbery, or other like violent and atrocious crime, by thoſe who have in knowledge of the fact, and of the perſon alſo of offender; this, too, in ſo urgent a caſe, is a ſufficient ication of a verbal order to the informer and others, urſue and take the individual thus poſitively char- who might otherwiſe eſcape, through the delay of ng for a written warrant." So it was judged in the certain perſons, who had gone in purſuit of a mur- n a verbal order from a privy counſellor and the pro- a royal borough, and had killed the man on his mak- paration to reſiſt them with a mortal weapon. The l happened in preſence of the provoſt, but not of the unſellor; yet the court of juſticiary found it equal- ant to acquit the pannels, whether they acted on er of the one or of the other. They had a verdict ittal accordingly [b].

§ 3. ARREST —VERBAL ORDER.

ce manner, as formerly obſerved, private individuals nd to aſſiſt a conſtable, or other officer, verbally re- their aid in arreſting a felon, as well as in ſuppreſſ- affray [c].

may be fitting in ſome caſes; and this in England s to be the uſual courſe of practice, that the warrant ranted after the examination only of the informer up- ath. But this is not invariably, nor even ordinarily, rved with us, in proceeding on the information even

les' Hiſt. 80. Burn, v. Ar- ber againſt Gilleſpie and others, Dec. 24, 1694. Maclaurin, No. 8.

[c] 2 Hawkins, 75. Burn, v. Arreſt, § 3.

§ 3. ARREST —VERBAL ORDER.

" of a private individual; and in cases of complaint, a " instance of the procurator-fiscal, or other public o " who could only swear to his belief of the inform " which has been brought him, it has never been cu " tom to make use of any such precaution [a]." Neit it indispensible to the validity of the warrant that it pr upon a written petition; which, however, as well as th amination of the party applying for it, ought not, if po to be omittted [b].

—WRITTEN WARRANT.

A WARRANT to apprehend, like the search-warrant, to be dated, and must be subscribed by the mag by whom it is granted. The warrant issued by a just the peace ought regularly to bear his stile and quality

Form of it.

the county, for which, as well as the place, where it is all which things are more especially proper to be obs if it be a separate warrant, not on the back of the a tion [c].

THE warrant must particularly name and describe th son to be apprehended. General warrants, which express against whom they are directed, have been reprobated as instruments of tyranny and oppression. " is not fit [d], either upon reasons of policy, or soun " struction of law, that where a man's being confir " pends upon information given, it should be left to " ficer to ascertain the person. The magistrate alone " judge of the ground of suspicion."

Before whom is he brought.

To whom addressed.

THE warrant may either be to bring the party bef granter himself, or before some other competent ma for the bounds; and it may either be addressed gene the proper officers of the magistrate who gives it, o

[a] Hume, vol. iii, c. 2.
[b] Ibid.
[c] Ibid.
[d] Lord Mansfield. Bla Reports, 555.

cularly to a certain meſſenger, macer, ſheriff-officer, conſtable, or the like; or, if neceſſary, even to a private perſon, who thereby becomes an officer *pro hac vice;* and if he executes it with all the neceſſary precautions, he ſhall enjoy the privileges and protection of that character [a].

Indorſation of the warrant.

EXCEPTING in one caſe, noticed above [b], the warrant of the juſtice of peace is of no force without the county, unleſs it be indorſed by a juſtice or other magiſtrate of the bounds where the perſon to be apprehended has taken refuge. Juſtices of peace, ſheriffs, and other magiſtrates, may indorſe the warrants of each other reſpectively; but the warrant of a lord of juſticiary has force over all Scotland. In like manner, by virtue of 13 Geo. III, c. 31, if the offender make his eſcape out of either part of the united kingdom into the other, the warrant is reſpectively indorſed by the judges of either country, its verity being previouſly proved by the oath of the bearer. Similar regulations were extended to Ireland ſoon after the union with that nation [c].

Either for examination, or immediate commitment.

WARRANTS uſually ordain the priſoner, with all convenient ſpeed, to be brought before the granter, or ſome other magiſtrate, for examination. They may order, however, his immediate commitment, if there be already ſufficient grounds of ſuſpicion againſt the priſoner, or if any other circumſtance prevent his previous examination. This indeed is the uſual ſtile of warrants from the lords of juſticiary, to whoſe office it does not pertain to examine the priſoner, or to ſet on foot a precognition concerning his guilt.

Form of thoſe by the court of juſticiary.

IN order to obtain the examination of a priſoner, who has been thus at once committed for trial, it is neceſſary to apply by petition, either to the judge ordinary, or to a juſtice of peace within the bounds, to grant warrant to bring the

[a] Hume, vol. iii, c. 2.
[b] P. 49.
[c] 44 Geo. III. c. 99. See Appendix I.

§ 3. ARREST, &c. priſoner before him for that purpoſe; which warrant may be competently granted by inferior judges, although the priſoner has been committed by the court of juſticiary.

§ 4. PRISONER'S EXAMINATION. When it ought not to proceed? IV. IT is the duty of the magiſtrate not to allow the examination to proceed, if the priſoner appear either to be affected with liquor, or otherwiſe diſordered in his intellect, or under any influence of threats or of promiſes which may have been employed to induce him to confeſs.

Not to be puniſhed, though he refuſes to ſay any thing. THE priſoner may, if he pleaſe, decline ſaying any thing; and cannot for ſuch ſilence, as for a contempt, or otherwiſe, be lawfully puniſhed, or harſhly treated by the magiſtrate. And as the declaration may militate againſt him, ſome magiſtrates humanely put him on his guard as to that particular.

THE priſoner's declaration thus ſolemnly and freely emitted, is a circumſtance of evidence to be afterwards uſed upon his trial.

THE examination muſt therefore be taken down at large, in writing; then read over to the priſoner, and ſubſcribed by him (provided he can or will ſign), as well as by the magiſtrate who has taken it, and two creditable witneſſes, who have heard and ſeen the examination itſelf from firſt to laſt; that, if neceſſary, on the trial they may be able to authenticate it, and ſwear to all that paſſed on the occaſion.

§ 5. PRECOGNITION. If the examination ſhews the accuſation to have been groundleſs? V. IF the magiſtrate be ſatisfied, from the examination, of the priſoner's innocency, and that the accuſation is groundleſs, it is his duty to ſet him at liberty. If otherwiſe, he may recommit him for farther examination, or until a precognition be taken [a].

[a] The priſoner is not intitled to bail againſt a recommitment of this kind, as we will ſoon ſee in conſidering the act 1701.

PRECOGNITION is an inquiry concerning the priſoner's § 5.
, by taking the declarations of ſuch perſons as may be PRECOGNI-
ɔſed to know any thing of the matter. By this means, TION.
riſoner, on the one hand, avoids the delay, expence,
nconvenience, of a trial, if there appear to be no ſuf-
reaſon for detaining him; the proſecutor, on the other
, is enabled to draw his libel with more preciſion, in the
of a trial taking place.

the witneſſes, who are meant to be examined, do not
d at the time, the magiſtrate may commit the priſoner
to jail, and appoint another day for the attendance of
itneſſes. Yet "it is carefully to be obſerved, that in Unreaſon-
is, as in all other things, the magiſtrate muſt uſe good able delay
th and fair dealing with the priſoner: for if he unrea- puniſhable.
ıably delay to take his precognition, or make uſe of
ſe and affected pretences of farther inquiries, on pur-
ſe to lengthen the man's confinement; this, without
ubt, is a malverſation and an act of oppreſſion, for which
e magiſtrate ſhall be anſwerable at common law [a]."

IE judge, either of his own motion, or on the applica-
of the public or private accuſer, may grant a warrant Citation of
iting witneſſes to attend a precognition; but any perſon witneſſes.
though not cited, may be examined. If they fail to
ır, he may then grant *letters of ſecond diligence*, or war-
to apprehend the perſons in default, and bring them
e him for examination. After their appearance, alſo,
may be coerced with impriſonment, if they refuſe to
er.

is uſual, in practice, to take their declarations merely. May the
it is diſcretionary with the magiſtrate to put them upon witneſſes
; which precaution is neceſſary, wherever, as often hap- be ſworn?

[a] Hume, vol. iii, p. 129.

§ 5. PRECOGNITION.

pens, from popular favour to the pannel, or towards the offence, or ſome other cauſe, the truth cannot otherwiſe be obtained. If they refuſe to ſwear, they are liable to be impriſoned [a].

Is the accuſed intitled to attend or have any perſon for him, preſent?

NEITHER the priſoner, nor any perſon in his behalf, is intitled to attend the precognition, or to obtain a copy, or even a peruſal of the declarations. Nor is there any proceſs at his inſtance for citing witneſſes to the precognition; but any ſuggeſtion, on his part, as to perſons whom it may be proper to precognoſce, ought to be attended to by the judge.

Witneſſes ſhould not hear one another precognoſced.

IT is the duty of the magiſtrate to take care, as far as poſſible, that the witneſſes be examined ſeparately, and that none of them either hear the declarations of the others taken or read over, or have an opportunity of peruſing them [b].

IT affords, however, no objection to the credibility of the magiſtrate, who is officially preſent at taking the precognition [c].

THE reaſon of the rule appears not to apply to thoſe witneſſes, who are called only to authenticate the declaration. But it applies as well to the caſe of a precognition conducted by the pannel as by the proſecutor. No fewer than thirteen exculpatory witneſſes, who had been aſſembled and examined by the pannel's agent, and had their declarations

[a] Hume, vol. iii, p. 129.

Whether perſons refuſing to ſwear on account of a religious ſcruple, as quakers, are liable to be impriſoned. See above, p. 243.

[b] In the trial of Brown and Murray for deforcement, the objection was ſuſtained to a witneſs, that he had been preſent at the taking of the precognition: this being the ſituation of all the other witneſſes, the proſecutor declined to call them.—1791, July 13.

[c] This objection, ſtated to Thomas Chriſtie and John Hog, the bailies of Dunbar, and repelled by the court in the trial of John Kerr for fire-raiſing. 1792, Jan. 13.

taken down and read over in preſence of each other, were on that account rejected [a]. §5. PRECOGNITION.

THIS laſt, no doubt, was a groſs attempt to corrupt the witneſſes. Accordingly, in a late caſe, the court of juſticiary did not ſuſtain this objection to the admiſſibility of a witneſs, whoſe preſence at the precognition had neither been from any improper motive, nor created any ſuſpicion againſt his veracity [b]. In this caſe, the point was very maturely conſidered. The court, indeed, did not think that there was any ſuch abſolute rule in the law of Scotland againſt the admiſſibility of a witneſs who had heard the precognition of the other witneſſes, as there is againſt that of a witneſs who hears the others examined during a trial. But this affords the magiſtrate no encouragement to be remiſs or negligent in this particular. It muſt always, in ſome degree, affect his credibility, and may ſometimes render him inadmiſſible.

THE precognition muſt be taken before the raiſing, or at leaſt before executing, the libel. That act is the commencement of the proceſs, after which all intercourſe with the witneſſes is illegal. Theſe declarations, whether on oath or not, can never be uſed againſt the witneſſes, but muſt be cancelled before they give evidence in the trial.

SHOULD one, who has been cited to the precognition as a witneſs, appear on his examination to have been himſelf concerned in the crime, the proper courſe is to cancel his declaration as a witneſs, and examine him anew as a party, after putting him on his guard, with reſpect to the different ſituation in which he is now placed.

"IT hath been uſual for the juſtices of peace, by whom "any perſons charged with felony are committed to gaol, to

[a] 1791, Jan. 31. John Lindſay. [b] 1801, December.

§ 5. PRECOGNITION.

" admit ſome one of their accomplices to become a witneſs " (or, as it is generally termed, king's evidence) againſt his " fellows, upon an implied confidence which the judges of " gaol delivery have uſually countenanced and adopted, that " if ſuch accomplice makes a full and complete diſcovery of " that, and of all other felonies to which he is examined by " the magiſtrate, and afterwards gives his evidence, without " prevarication or fraud, he ſhall not be proſecuted for that " or any other previous offence of the ſame degree [a]."

PROFESSOR CHRISTIAN remarks, that neither the deciſion alluded to, nor opinions of the court, nor the reaſon of the doctrine, extends the claim of the witneſs to mercy, beyond thoſe offences in which he has been connected with the priſoners, and concerning which he has previouſly undergone an examination. " This diſcretionary power, exerciſ- " ed by juſtices of peace, is founded on practice only; and " cannot, at all events, exempt the accomplice from being " proſecuted. The admiſſion to be a witneſs amounts to a " promiſe of a recommendation to mercy, upon condition " that the accomplice makes a full and fair diſcloſure of all " the circumſtances of the crime for which the other wit- " neſſes are tried, and in which he has been in concert with " them. Upon failure, on his part, with this condition, he " forfeits all claim to protection [b]."

WITH us the law is underſtood as laid down by the learn-

[a] Couper, p. 331. Blackſtone, b. iv, c. 25.

[b] Chriſtian, ibid. " And upon a " trial ſome years ago at York, be- " fore Mr. Buller, the accomplice, " who was admitted a witneſs, de- " nied, in his evidence, all that he " had before confeſſed; upon which " the priſoner was committed; but " the judge ordered an indictment to " be preferred againſt this accom- " plice for the ſame crime: and up- " on his previous confeſſion, and " other circumſtances, he was con- " victed and executed. And if the " jury were ſatisfied with his gu[illegible] " there can be no queſtion with " gard both to the law and juſtice " the caſe." Ibid.

l profeſſor. There is no immunity for more than the par- §5. PRECOGNI-
ular offence in queſtion. It is alſo clear, that a declaration TION.
itted by the culprit, upon the faith of his being admitted
be king's evidence, cannot be uſed or libelled on againſt
a, ſhould the public proſecutor bring him to trial; but he
y be tried without uſing it. Such bargains, however, are
ly made, even by ſheriffs, in this country, without the
miſſion of the public proſecutor: ſtill ſeldomer, by juſtices
peace.

If the precognition ſhews the accuſation to be groundleſs,
: priſoner ought to be diſcharged immediately. If it af-
d grounds of ſuſpicion againſt him, the magiſtrate muſt
t grant warrant of commitment for trial. The accuſed
n returns to priſon, unleſs the crime be bailable, when he
ſt be liberated on offering ſufficient bail; in all which
mentous and intereſting particulars, the magiſtrate, hap-
y, is not intruſted to the guidance of his own diſcretion,
equitable feelings, which, even in good men, are ſome-
es biaſſed by partial views, and the caprice and prejudices
the moment; but, at his peril, muſt walk in ſtrict conform-
to the minute and anxious regulations of the act 1701.

VI. THIS enactment, (our venerated bulwark againſt ille- §6.
and arbitrary confinements, the moſt formidable and re- WILL. P. I,
dileſs engine of official tyranny and oppreſſion), paſſed in 1701, c. 6.
firſt parliament of that illuſtrious monarch, the friend and
mpion of freedom[a], to whom, through the providence of
d, we owe our happy "ſettlement" in church and ſtate.

T is intitled, "An act for preventing wrongous im-
riſonment, and undue delay in trials;" and contains
e ſeparate enactments. *Firſt*, it ſpecifies certain form-

[a] "The love of liberty was predo- "minant in the character of Wil- "liam," &c. "The alluring bait of "royalty he repelled with diſdain, "when propoſed to him upon terms "ruinous to the freedom of his coun- "try" (Dr. Sommerville's Hiſt. of polit. tranſ. p. 592.)

§ 6. WILL. P. I, 1701, c. 6. —COMMITMENT.

alities, eſſential to a legal commitment for trial; *ſecond*, it lays down the law reſpecting liberation on bail; *third*, it points out a method by which the priſoner may prevent his trial from being delayed beyond a certain definite time; which ſeveral proviſions, and the reſpective deciſions upon them, require to be maturely conſidered, and thoroughly underſtood, by the magiſtrate, who, if he err here, though unwittingly, is yet liable in damages, and will in vain plead that *bona fides*, and integrity of intention, which is his ſure refuge in the conſcientious diſcharge of almoſt every other branch of official duty.

THE clauſe relative to the validity of the commitment, is as follows: "All informers ſhall ſign their information; "and that no perſon ſhall hereafter be impriſoned for cuſto- "dy in order to trial for any crime or offence without a "warrand in writ, expreſſing the particular cauſe for which "he is impriſoned; and of which warrand the meſſenger "or executor thereof, before impriſonment, or the keeper "of the priſon receiving the ſame, is hereby ordained to "give a juſt double immediately under his hand to the "priſoner himſelf for the end after ſpecified: declaring, "that all warrands for impriſonment, on the account afore- "ſaid, either proceeding upon informations not ſubſcribed, "or not expreſſing the particular cauſe, ſhall be void and "null; and the judge, or officiar of the law, and all others "whatſomever ſubſcribing the ſame, and the executors, or "keeper of the priſon, who ſhall receive and detain the "perſon ſo wrongfully ordered to be impriſoned, or refuſ- "ing a double, as ſaid is, ſhall be liable in the puniſhment "of wrongous impriſonment hereafter expreſt."

THIS clauſe requires three things to the validity of a commitment for trial, or (as it is uſually worded) *till liberated in due courſe of law*; that it proceed upon a ſigned information; that there be a written warrant, expreſſing the cauſe

f commitment; and that a duplicate of ſuch warrant be de- § 6. WILL. P. I, 1701, c. 6. —COMMITMENT.
ivered to the accuſed before or immediately upon his im- priſonment.

FIRST, the foundation of the whole muſt be a ſigned in- 1st, Signed information
formation. Commitment for trial here differs from the original commitment for examination, as well as from ſuch recommitments as may be neceſſary during the courſe of the precognition, which, as we have ſeen, may take place without any ſigned information, and even by the magiſtrate's verbal order. The ſtatute expreſsly ſpecifies "impriſonment "for cuſtody in order to trial." When neceſſary?

THIS neceſſity of a ſigned information prevents any dan- Why?
ger from the malice of unſeen enemies. The informer muſt ſtand forward, reſponſible for the accuſation he makes.

THE regular and uſual form is a petition, or other com- Form of it.
plaint, ſigned by the procurator-fiſcal or party, and praying for commitment of the perſon named, as at his ſuit, or inſtance. But any *ſigned* information, whether in the form of *affidavit*, declaration, or even letter, diſtinctly deſcribing the charge, with the facts on which it is founded, and duly referred to in the warrant, ſeems ſufficient, both under the ſpirit and words of the act [a].

THE only deciſion that appears in the books reſpecting this clauſe, enforces it very ſtrongly, by awarding damages againſt a magiſtrate who was not ſuſpected of intentional wrong [b]. The error was impriſoning for cuſtody in order

[a] Hume, vol. iii, c. 3.

[b] Kilkerran, June 10, 1748, Philp *contra* White and Drummond. John Drummond, bailie in Anſtruther-Eaſter, having had his ſhop broke, and a parcel of ſtockings, &c. ſtolen from him, were, upon ſearch, found in the houſe of A. Wilkie, maſon in Collingſburgh, who thereupon was committed to priſon; and being examined upon the 3d of July 1746, in preſence of Thomas White, likewiſe bailie in

§ 6. WILL. P. I, 1701, c. 6. —COMMITMENT.

to trial, upon the verbal, inſtead of the written, declaration. This is expreſsly remarked by the very eminent judge who reports the deciſion.

" N. B. HAD Wilkie's" (the informer's) " declaration " been taken down in writing, and ſigned by him, that " would have been a ſigned information, on which a war- " rant of commitment might have been regularly " granted; *but the error lay in that all was verbal.*"

Anſtruther-Eaſter, he emitted a declaration, acknowledging the fact, and averring in ſubſtance, that Duncan Philp was the propoſer, aider, and principal actor, in it; whereupon Philp was, upon bailie White's order, alſo committed to the priſon; but being brought face to face with Wilkie, notwithſtanding Wilkie charged him with the guilt, he perſiſted in denial thereof. And being ſet at liberty, he brought a proceſs againſt the ſaid bailies for themſelves, and as repreſenting the community, of oppreſſion and damages, on this ground, that he had been impriſoned without any ſigned information againſt him as guilty of any crime, and without any warrant of commitment in writing, expreſſing the cauſe of his commitment, as by law required.

The defenders, after ſetting forth the above circumſtances, in order to ſhew the uprightneſs of their intentions, their innocence of any deſign to injure or oppreſs the purſuer, the neceſſity their duty laid them under to commit the purſuer after Wilkie's declaration, and the hardſhip it would be on magiſtrates *bona fide* endeavouring to do their duty, were they to be treated as criminals for every ſlight eſcape in point of form; pleaded this defence, that the ſtatute 1701, requiring ſigned informations and written warrants of commitment, excepts pickering and thieving; and ſuch is the preſent caſe. *Ado*, Though the caſe ſhould not fall under the exception, yet the conſequence could only be that action would lie for the ſtatutory penalty: but ſo it is, the action is not brought on the ſtatute, but only for oppreſſion and damages.

But neither of theſe defences being ſatisfying, as houſe and ſhop-breaking was not thought to fall under pickery; and that as an action laid upon the act only has been ſuſtained for damage, when the fact did not come up to the ſtatute; ſo where the fact charged is ſuch as might have warranted an action on the ſtatute, *multo magis* ſhould it be ſuſtained when laid for oppreſſion and damage; the lords, of this *date*, " found the defenders, Thomas White " the judge, and John Drummond " the party, liable in damages to the " purſuer, which they modified to " 10l. ſterling, and in the expence of " proceſs;" and " refuſed a bill " gainſt this interlocutor without ſ- " ſwers."

A WRITTEN information, which is thus indiſpenſible, will protect the magiſtrate from any complaint under the ſtatute; even ſhould the frivolous or malicious nature of the information afford the injured party ground for an action of damages at common law againſt the procurator-fiſcal or private informer. §6. WILL. P. I, 1701, c. 6. —COMMITMENT.

THE public proſecutor, in ſuch a caſe, has to defend himſelf upon the ground of private information, or that which has been procured in the courſe of his official inquiry. Whether he is bound to give up the names of his informers has been already conſidered[a]. The procurator-fiſcal will not be ſubjected, without complete evidence of malicious intention; "there being this difference between the ſituation of a public officer and an individual, that the former "is obliged to interfere, while the latter is not, it would be "dangerous to ſubject him in damages when he acted *bona* "*fide*[b]." The private individual, again, has to defend himſelf upon his reaſonable grounds of ſuſpicion; and though he ſtands not quite in ſo favourable a predicament as the public proſecutor, yet, "as far leſs evidence is neceſſary to "juſtify an information for commitment in order to trial "than is neceſſary for conviction of the party accuſed," ſo "if the informer acted *bona fide*, and upon *any plauſible* "*ground* of ſuſpicion, he is not to be found liable in damages, "though the perſon ſhould be acquitted: for when men "are robbed, they are not to be put in terror for damages, "and thereby reſtrained from taking the legal method of "obtaining redreſs[c]." Procurator-fiſcal reſponſible at common law?

Private party reſponſible at common law?

[a] See above, p. 88.

[b] Obſervation from the bench, in the caſe Henderſon againſt Scott, February 7, 1793.

[c] November 27, 1747, Jamieſon *contra* Napier.

"Some general rules with reſpect "to commitments in order to trial.

"Mr. Napier of Blackſtoun having had the lock of his drawers "picked, and money ſtolen, whereof, "in the nature of the thing, he could "have no other evidence but his own "word, as men do not let any body "know what money they have in "their repoſitories, applied to the

§ 6. WILL. P. I, 1701, c. 6, —COMMITMENT.

THE *ſecond* requiſite is a written warrant, expreſſing the particular cauſe of the impriſonment. For as the act, in its proem, obſerves, it is declared, by the Claim of Rights, that the impriſonment of perſons, without expreſſing the reaſons, is contrary to law. Regularly, the warrant ought to expreſs the date, the deſignation of the magiſtrate, the jail to which the perſon is to be carried, and the concluſion of the confinement, *till liberate n due courſe* of law. But the omiſſion of theſe particulars may not conſtitute an abſolute nullity in the warrant, provided it be ſufficiently explicit as to the nature of the charge, and the information it proceeds on.

Served with a double thereof.

THE *third* requiſite is, that before, or immediately upon,

" ſheriff-ſubſtitute of Renfrew for a " warrant to commit John Jamieſon, " one of his own workmen, to priſon, " wherein he ſet forth the grounds " of ſuſpicion, that he was the perſon " guilty; and on this application, the " ſheriff-ſubſtitute, without taking " any precognition, granted warrant " for committing Jamieſon to priſon, " which was done accordingly. Ja- " mieſon having brought an action " of wrongous impriſonment and da- " mages againſt both Blackſtoun and " the ſheriff, wherein appearance was " made for Blackſtoun, (for as to the " ſheriff he neither compeared nor " was inſiſted againſt) a condeſcend- " ence *hinc inde* was made of facts, " and a proof led; which the lords, " on adviſing, having found no evi- " dence of the theft, by their firſt in- " terlocutor found Blackſtoun liable " in damages; but, on adviſing bill " and anſwers, aſſoilzied him.

" It is unneceſſary to ſtate the par- " ticular facts, as circumſtantial caſes " can be of little uſe in the deciſion " of any other; all that is intended " is, to lay down the general rules " whereon the lords proceeded.

" 1*ſt*, That where a man finds the " lock of his repoſitory picked, and " miſſes money, it is, what in the na- " ture of the thing, he can produce " no other evidence of than his own " word or oath, as men are not in " uſe to let any body know what " money they have by them. One " may prove by thoſe of his family, " what bulky goods he had, and in " what place they uſed to lie; but " the caſe is different as to money.

" 2*dly*, That in the proof of theft, " or acceſſion to theft, the greater the " opportunity the perſon accuſed has " to commit it, and the greater diffi- " culty there is to guard againſt it, " the more ſlender evidence is to be " admitted in proof of the fact, or to " juſtify an application for a warrant " of commitment."

priſonment, he ſhall be ſerved with a duplicate of the rrant, under the hand of the meſſenger, or other officer, rer thereof, or the keeper of the priſon, who ſhall be le in the penalties of the act, if he refuſes to give it. : uſual, and, where it can be done, the beſt, way of com- ng with the two laſt proviſions of the ſtatute, is, to ſubjoin warrant to the information it proceeds upon, and ſerve with a copy of both [a]. But all that the act intitles the oner to exact, is a copy of the warrant; which, how- r, in that caſe, muſt ſpecify the charge, not indeed with h preciſion as in the libel, but yet with reaſonable fulneſs; for example, in the caſe of theft, the article ſtolen, the e when, and the perſon from whom, or the place whence, y were ſtolen, as accurately as circumſtances will admit. t it muſt particularly refer to the information, and not it the name of the informer, at whoſe ſuit or inſtance it ſſued. § 6. WILL. P. I, 1701, c. 6, —COMMITMENT.

THESE three requiſites concern not the magiſtrate mere- but the officers and jailors alſo. Anxious to guard per- al liberty againſt every poſſibility of danger, the act in- s, in this particular, the ſubordinate officers of the law, h powers of judging of the legality of the warrant, and jects them alſo in the penalties of wrongous impriſon- nt, if they detain any perſon in cuſtody upon one defec- : in any of the above mentioned requiſites. Jailors and officers puniſhable.

THE ſtatute has not directed what ſhall be the priſoner's rſe of proceſs for relief, when confined on ſuch defec- : or illegal warrant; "but, as it ſeems, the warrant is oid in ſuch a caſe, and ſhall be the ground of penalties gainſt the keeper of the priſon, if he detain upon it; ſo it ems to follow, that the priſoner has right to his releaſe Method of relief.

[a] Hume, vol. iii, p. 135.

§ 6. WILL. P. 1, 1701, c. 6, " in the ſpeedieſt and moſt ſummary mode of applica- " tion [a]."

—BAIL. THE priſoner muſt intimate his application to the party at whoſe inſtance he is committed, and who is intitled to have an opportunity of contradicting the ſtatement of the petition, as well as of obtaining a new warrant in caſe of any defect in the former. Intimation is neceſſary in the caſe alſo of the petition proceeding on the alleged want of a written information, that the magiſtrate may produce any ſuch authority he has.

THE priſoner's liberation upon bail, or ſecurity to anſwer at his trial, is the next ſubject of attention. Even in our ancient practice, this privilege was not unknown [b]. By this ſtatute it is reduced to a clearer, more certain, preciſe, and far more available ſyſtem. The clauſe is as follows: " All " crimes not inferring capital puniſhment ſhall be bailable: " And, for clearing and eſtabliſhing the method of finding " bail in ſuch caſes, either before or after impriſonment, it " is ſtatuted and ordained, that it ſhall be lawful to the " priſoner, or perſon ordered to be impriſoned, to apply to " the committer, or commiſſioners of juſticiary, or other " judge competent for cognition of the crime, and offer to " find ſufficient caution, that he, the ſaid priſoner, or perſon " ordered to be impriſoned, ſhall appear and anſwer to any " libel that ſhall be offered againſt him, for the crime or of-

[a] Hume, vol. iii, p. 138. " Accordingly George Brodie ob- " tained an order to be releaſed, on " his petition to the lords of juſti- " ciary, ſetting forth, and verifying, " with production of his copy, that " the charge againſt him was not ex- " preſſed in the warrant of commit- " ment. Relief had been given for " the like reaſon, on the application " of Francis O'Neil (June 19 and 20); " of the earl of Wigton (Nov. 20, " 1716); of the earl of Home; and of " William Delavalle; as alſo on that " of John Calder, againſt whom no " written warrant ſeems ever to have " been given."

[b] Hume, vol. iii, p. 139.

" fence wherewith he is charged, or at any time within the " ſpace of ſix months; and that under ſuch a penalty as the " ſaid committer, or the lords of juſticiary, or other judge " competent, ſhall modify and appoint. And that, upon " the ſaid application, the ſaid committer, or lords of juſti- " ciary, or other judge competent, ſhall firſt cognoſce, whe- " ther the crime be bailable or not, in order to the finding " bail allenarly; and if it be found bailable, then he or " they ſhall be obliged to modify the ſum for which the bail " is to be found, within twenty-four hours after the ſaid pe- " tition is preſented to them or him reſpectively, the ſum " for which the bail is to be found, not exceeding *ſix thou-* " *ſand merks* for a nobleman, *three thouſand merks* for a land- " ed gentleman, *one thouſand merks* for any other gentleman " and burgeſs, and *three hundred merks* for any other perſon, " under the pain of wrongous impriſonment: And, upon " the parties finding ſufficient bail, under the penalty mo- " dified at the ſight of the ſaid judge or judicatory *reſpec-* " *tive*, and delivering or offering the ſame to the clerk, and " inſtruments taken upon the delivery, or offer of ſufficient " caution, the ſaid committer, or judicatory competent, ſhall " order his liberation, or diſcharge his impriſonment, if not " incarcerated, under the penalty of wrongous impriſonment. " As likewiſe, that ſufficient bail, under the penalty modi- " fied, being offered to the judge or magiſtrate to whom the " execution of the warrant is directed, the ſaid judge or " magiſtrate ſhall be obliged, and is hereby appointed and " ordained, to accept of the aforeſaid bail, and ſet the priſoner " at liberty, under the like penalty of wrongous impriſon- " ment."

§ 6. WILL. P. 1701, c. 6, —BAIL.

THE doctrine of bail, as laid down in the ſtatute, may be conſidered under theſe five particulars: what crimes are bailable; what magiſtrates can liberate on bail; the form of the application; the time within which the magiſtrate muſt

WILL. P. 1, 1701, c. 6, —BAIL.

pronounce his deliverance on the petition; the judging of the ſufficiency of the bail; and the terms of the bail-bond.

No capital crimes.

THE general rule is, that no capital crime is bailable. In extraordinary caſes, the court of juſticiary have extended this relief to priſoners under capital accuſation [a]; but no ſuch diſcretion belongs to magiſtrates or to ſubordinate judicatories.

One capital crime bailable.

Revenue officer.

IN one caſe of commitment for homicide, juſtices of peace, and other judges and magiſtrates, are expreſsly ordained to admit the priſoner to bail. This is a ſpecial regulation in favour of revenue officers, who have been violently reſiſted in the attempt to ſearch for and ſeize prohibited goods, from perſons paſſing with the ſame, under circumſtances deſcribed in the ſtatute [b]. "They muſt, however, remain in "jail till a precognition be taken, from which it may ap- "pear whether the ſlaughter falls under the intendment of "this law [c]."

Bailable crimes.

CAPITAL crimes were already enumerated under the article of puniſhment [c]. Here, therefore, only ſome general remarks are neceſſary.

1ſt general rule.

THE crime being bailable or not, depends on the letter of the law. Though it may neither be uſual in practice, nor the avowed or probable intention of the proſecutor in the particular caſe, to conclude for the full pains of law, yet, if it may be puniſhed capitally, it is not bailable [c].

[a] Hume, vol. iii, p. 145.

[b] 9th Geo. II, c. 35. No. 35. See appendix I. No.

[c] Hume, vol. iii, p. 148.

[d] See above, book i, c. 5, § 4.

[e] Thus in the caſe of Alexander Macdonald, committed on a charge of ſaying maſs; of George Short, committed on a charge of forging the acceptance of a bill for 2l. 5s. 6d.; of William Mackean (July 1, 1752), and Alexander Black, 16th March 1784), committed for capital deforcement of the revenue; the court of

THE proſecutor cannot be obliged to declare whether he intends to reſtrict his libel to an arbitrary puniſhment. § 6. WILL. P. I, 1701, C. 6, —BAIL.

ONLY thoſe crimes are not bailable which are puniſhable with death on conviction. A crime then is bailable, though the puniſhment be baniſhment under certification of death, ſhould the delinquent return to the country [a]. 3d general rule.

WHILE the uncertain iſſue of any event, as the recovery, for inſtance, of a perſon who has been wounded, makes it doubtful whether the crime may be capital or not, bail cannot be taken [b]. 4th general rule.

IN general, in conſidering whether a crime be bailable or not, the magiſtrate muſt take the charge, as it appears on the face of the commitment. However, ſhould the charge appear to be palpably malicious and extravagant, as by magnifying a common aſſault into hameſucken, or a mere treſpaſs into a robbery, it would be competent for the ſheriff, in ſuch a caſe, to controul his fiſcal, and ſtill more ſo for the ſupreme court to remedy ſuch injuſtice, if committed by a ſheriff, or other inferior magiſtrate [c]. There ſeems to be no reaſon to doubt, that juſtices of peace may exerciſe the ſame ſound diſcretion, in the caſe of any ſuch malicious commitment, by their fiſcal, or private party, with his concourſe. How far a juſtice could ſo interpoſe, where the commitment is by another authority, will be immediately conſidered. 5th general rule.

juſticiary found they could not admit them to bail, although thoſe offences were not uſually proſecuted to the utmoſt rigour of the ſtatutes.

[a] 27th February 1755, John Cannochar committed for celebrating clandeſtine marriages.

[b] The court of juſticiary refuſed Robert Corſe's petition for bail, in reſpect that "hitherto there was not "ſufficient evidence of the ſaid John "Dickſon being out of danger of his "life." 24th July 1741.

[c] Hume, vol. iii, p. 144.

§ 6. WILL. P. I, 1701, c. 6, —BAIL.

POWER to liberate on bail is intruſted only to "the committer, or commiſſioners of juſticiary, or other judge competent for cognition of the crime." No juſtice of the peace, therefore, can grant warrant of liberation on bail, unleſs the commitment be either in virtue of his own authority, or for a crime cognoſcible by the ſeſſions. A priſoner committed by warrant of the court of juſticiary, or ſheriff, or *even of another juſtice of peace*, to cuſtod, for trial of a crime not competent to be tried before the ſeſſions of the peace, muſt apply to thoſe judges, and not to any juſtice of the peace.

What magiſtrates can grant bail.

Either court of juſticiary,

or competent judge.

IN the laſt caſe alſo, other juſtices of the peace, he only excepted who granted the warrant, are excluded by the ſtatutory deſcription, neither being the committer, nor competent to cognoſce the crime.

If the warrant be from another juſtice, but the crime not triable by the ſeſſions?

THE application for bail muſt be in writing. It is only *after ſaid petition is preſented to the judge*, that he is ordained by the ſtatute to proceed. Beſides, if the application be in writing, his judgment is matter of record againſt him in caſe of his doing wrong.

Writing.

To enable the magiſtrates to determine whether the crime be bailable or not, the petition ought to be accompanied with the priſoner's copy of his warrant of commitment. But this is not neceſſary in the way of ſolemnity, nor will the omiſſion excuſe a magiſtrate for refuſing bail, if otherwiſe acquainted with the nature of the charge [a].

Application when to be made.

HUMANELY intending, not merely to ſecure the priſoner's releaſe, but to prevent the inconvenience and diſcredit of impriſonment altogether, it makes the application expreſsly competent either *before* or after impriſonment, and to the

[a] Hume, vol. iii, p. 151.

"perſon ordered to be impriſoned," as well as to the priſoner. § 6. WILL. P. I. 1701, c. 6, —BAIL.

AGREEABLY to its general plan, of leaving nothing diſcretionary with the magiſtrate, the act allows the judge no more "than twenty-four hours, after the petition is preſented to him," to cognoſce whether the crime be capital or not; and if it be found bailable, then to modify the ſum for which bail is to be found. After the petition is given in, any delay, through the neglect or deſign of the clerk, or other perſon, in preſenting it to the judge, is puniſhable, though not under the ſtatute, yet at common law. Limited time for granting or refuſing it.

WHEN the magiſtrate has modified the ſum for which bail muſt be found, it belongs, in the firſt inſtance, to the clerk of court to decide upon the ſufficiency of the bail offered. But if the clerk reject it, and the priſoner taking inſtruments thereon, again apply to be liberated, in terms of the ſtatute, it is then neceſſary for the judge to determine himſelf concerning its ſufficiency. Who judges of the ſufficiency of the bail.

THE bail to be found, is, that he ſhall appear and anſwer to any libel that ſhall be offered againſt him, for the crime or offence wherewith he is charged, at any time within the ſpace of ſix months, which are counted from the date of his bail-bond; ſix months being, in general, ſufficient time for enabling the proſecutor to prepare for trial. Mr. Hume remarks, that he never obſerved an inſtance of the lords putting the priſoner to a renewal of his bail for a farther term, on expiration of the firſt [a]. Terms of the bail. How long. If renewed?

THE ordinary terms of the bail-bond is, "to anſwer to "any libel;" and if it does not expreſsly add, "and at all At all diets.

[a] Hume, vol. iii, p. 15.

§ 6. WILL. p. 1, 1701, c. 6, —BAIL.

"diets of court in ſuch action," the cautioner is free if tl firſt diet be attended by the pannel, who, ſhould the trial l delayed, muſt apply for bail anew, and may lawfully do until he be remitted to an aſſize.

—FORCING ON THE TRIAL.

SOMETHING, ſtill, was requiſite to complete the ſecuri of the priſoner; who might be unable to find bail, or committed for trial of a crime not bailable; and, in ſu caſes, was ſtill expoſed to the danger of the public proſec or's oppreſſively prolonging his confinement, without brii ing him to trial.

Frequent oppreſſion by delay of trial.

THE juſticiary records ſhew to what length this ſpecies oppreſſion was formerly carried; when the priſoner had other method of obtaining relief, except applying to court by a petition, which was uſually appointed to be i mated to the public proſecutor, who was ordained to a againſt a certain day, whether he meant to inſiſt in the or not. Upon which day, if he ſaid he was to inſiſt, he w obliged to take another day, when the trial either procee ed [a], or the priſoner was ſet at liberty.

Common law remedy

[a] Thus, 5th July 1661, a court of juſticiary appears to be held, per mandatum et diſpenſationem parliamenti, a form requiſite in thoſe days, as no court was allowed to ſit during the ſeſſion of parliament without a parliamentary diſpenſation; and on this occaſion there appears in the record the following entry: "The juſtice "aſſigns 19th July inſtant to inſiſt "againſt Jean Brown and Mary "Wylie; and recommends to Mr. "Robert Hunter, and Mr. James "Binnie to be ready that day, and "to ſpeak to the advocate, and de- "clare that they will put the ſaid "priſoner to liberty, upon caution to "ſiſt her that day under the pain "5000 merks." On the 19th of t month there appears another di when the following minute was e tered: "Compeared Mr. Rob "Hunter, and Mr. James Binnie, "vocates, and take the 1ſt of Aug "next to come to inſiſt againſt J Brown and Margaret Wylie. Co "peared Jean Brown, and produ "a bond, ſubſcribed by James L "Forreſter, as cautioner for her "try the 1ſt of Auguſt next, un "the pain of 5000 merks." On ſaid day of Auguſt, the trial proce ceeding, they were acquitted, *that the proſecutor was in uſe to fix*

§ 6. WILL. P. 1701, c. 6, —FORCING ON THE TRIAL.

STILL, however, he was not abſolved from the crime, but remained liable to a new commitment and proceſs for the very ſame offence[a]. And the trial, if once commenced, might have been protracted, without limitation, by ſucceſſive adjournments[b]. Beſides, even this inadequate relief was rather prayed for from motives of compaſſion than of right. It was not demanded in a ſpecific ſhape, under the ſanction of pains and penalties. It reſted wholly on the diſcretion of the judge, who might either interpoſe or not, or fix an earlier or a later day, as he thought fit. Although, therefore, relief certainly might (and really appears to) have been afforded, wherever the delay proceeded from forgetfulneſs only, or perhaps mere private ill-will in the public proſecutor, yet its utter inadequateneſs to guard the lieges againſt the arm of power was ſeverely experienced under the two laſt princes of the houſe of Stuart.

Inefficacy of the common law remedy.

SECONDLY. Hence our forefathers, amid other grievances, took care, in the Claim of Rights, to mention "impriſ-"oning of perſons, without expreſſing the cauſe, and *delay-*"*ing to put them to trial.*" The ſeveral clauſes relative to this, the moſt important object of the ſtatute, are as follows.

1, "AND his majeſty, with advice and conſent foreſaid, "ſtatutes and ordains, that, upon application of any priſon-

day for the trial, appears from the following minute ſubjoined, in theſe words: "After pronouncing of the "aſſize, their verdict, Mr. David "Dunmure, advocate, proteſted that "his majeſty's advocate muſt yet in-"ſiſt againſt them at any diet he "pleaſes, for lying, perjury, and pre-"varication, which the juſtices ad-"mit."

It is a remarkable circumſtance, that matters of this kind are held to be of ſo much importance as to occaſion the obtaining a diſpenſation from parliament for the juſticiary to ſit; for on the diet of 5th July no trial goes on; the whole ſteps taken that day, being either ſetting the priſoners at liberty, or taking meaſures for bringing on their trial. Croſbie inf. Macewan, 12th July 1716, vid. 1701.

[a] Hume, vol. iii, p. 159.

[b] Ibid.

§ 6. WILL. P. I, 1701, c. 6, —FORCING ON THE TRIAL.

" er for cuſtody in order to tryal, whether for capital or " bailable crimes, to any of the lords of juſticiary, or other " judge or judicatory competent for judging the crime or " offence for which he is impriſoned, and the ſaid priſoner " his producing the ſaid double of the warrand of his im- " priſonment under the keepers hand, the ſaid judge or ju- " dicatory competent, under the pain of wrongous impriſon- " ment, are hereby ordained within *twenty four hours* after " the ſaid application and petition is preſented to him or " them, to give out letters or precepts direct to meſſengers " for intimating to his majeſties advocat or procurator-fiſ- " cal, and party appearing by the warrand to be concerned, " if any be within the kingdom, to fix a dyet for the tryal " within ſixty days after the intimation; certifying his ma- " jeſties advocat or procurator-fiſcal, and the ſaid party con- " cerned, that if they failzie, the priſoner ſhall be diſcharg- " ed and ſet at liberty without delay, for doing whereof " the ſaid judge or judicatory competent, are hereby expreſs- " ly warranted, and ſtrictly required and ordained, to do " the ſame under the penalty foreſaid, unleſs the delay be " upon the priſoner's petition or deſire.

2, " AND the dyet of the tryal being preſixed, the magi- " ſtrats of the place, or keeper of the priſon, ſhall then be " obliged to deliver the priſoner to a ſufficient guard to be " provided by the judge, his majeſties advocat, or procura- " tor-fiſcal, that the priſoner may be ſiſted before the judge " competent, and his majeſties advocat or procurator-fiſcal, " ſhall inſiſt in the libel, and the judge put the ſame to a " tryal, and the ſame ſhall be determined by a final ſentence " within fourty days, if before the lords of juſticiary, and " thirty days if before any other judge.

3, " AND if his majeſties advocat or procurator-fiſcal, do " not inſiſt in the tryal at the day appointed, and proſecute " the ſame to the concluſion as aforeſaid; his majeſty with

§ 6. WILL. P. I, 1701, c. 6, —FORCING ON THE TRIAL.

" advice foreſaid, ſtatutes and ordains, that the dyet ſhall " then be *ſimpliciter* deſerted, and the priſoner immediately " liberat from his impriſonment for that crime or offence.

4, " AND if no proceſs be raiſed and execute within the " time allowed, or in caſe of not inſiſting at the dyet, and " bringing the proceſs to a concluſion within the foreſaid " ſpace, it ſhall be lawful to the priſoner to apply to the " juſtice-general, juſtice-clerk, or any of the lords of juſti- " ciary or judge competent reſpective; and upon his appli- " cation, and inſtructing that the limited time by law for " inſiſting or concluding the proceſs is elapſed, and inſtru- " ments taken thereupon, the ſaid juſtice-general, juſtice- " clerk, lords of juſticiary, and judge competent ſhall be " obliged within twenty four hours, to iſſue our letters or " precepts direct to meſſengers, for charging the magiſtrats, " or keepers of the priſon where the priſoner is detained, " for ſetting him at liberty, under the penalty of wrongous " impriſonment, in caſe of delay or refuſal, to grant the ſaid " letters or precepts, or to ſet him at liberty after the charge, " without prejudice to the keeper of the priſon, as to his " dues in all caſes of liberation as formerly before the mak- " ing of this act.

5, " AND the priſoner being liberat in manner foreſaid, " it ſhall not be lawful to put or detain him in priſon for " the ſame crime, under the penalty of wrongous impriſon- " ment, in caſe his former liberation be made known to the " committer before the warrand be granted, or in caſe he " be detained after his former impriſonment is ſufficiently " inſtructed to the keeper of the priſon, who, upon produc- " tion of the former warrand of his liberation from his im- " priſonment for the ſame crime, ſhall be obliged to ſet the " priſoner furthwith at liberty, unleſs there be new criminal " letters raiſed before the commiſſioners of juſticiary, and " duely execute againſt the ſaid priſoner.

§ 6. WILL. P. I. 1701, c. 6. —FORCING ON THE TRIAL.

6, "IN which caſe, it is hereby declared lawful to im- "priſon him of new, though the ſaids letters be raiſed for "the ſame crime, for which he was formerly incarcerat, "and it ſhall be lawful to apprehend and ſecure him at the "time of executing the ſaids letters, or at any time there- "after before tryal, and to detain him till his tryal, or that "he be ſet at liberty in the due courſe of law: and his ma- "jeſty, with advice and conſent foreſaid, ordains his majeſ- "ties advocat to inſiſt in the ſaid lybel, and proſecute the "ſame to a final ſentence within fourty days after the ſaid "priſoner is of new incarcerat thereupon, unleſs the delay "be upon the application, or at the deſire of the priſoner; "wherein, if the kings advocate failzie, the dyet is to be de- "ſerted *ſimpliciter*, and the priſoner ordained to be ſet at li- "berty from the ſaid impriſonment.

7, "AND the proceſs not being duely proſecute as afore- "ſaid, and the dyet thereupon deſerted, his majeſty, with "advice and conſent foreſaid, declares the party impriſoned "a ſecond time as aforeſaid, to be for ever free from all "queſtion or proceſs for the foreſaid crime or offence."

UNDER this head of delay of trial, there ſeems to be four principal caſes. *Firſt*, when the diet is properly fixed, but the proſecutor does not inſiſt; *ſecondly*, when no diet is fixed, or ſteps taken to bring to a trial; *thirdly*, where a libel has been ſerved, without fixing a diet, that the trial may take place within the legal time limited by law; *fourthly*, when the trial, though properly brought and inſiſted in, is not finiſhed within the forty days. In the firſt caſe, the matter is left to the common law remedy, of ſimply deſerting of the diet. In the other three caſes, which ariſe ont of the ſtatute, it affords the remedy of letters of liberation.

THE firſt of theſe clauſes uſes the expreſſion, "to fix a "diet for the trial within ſixty days;" which limitation has

§ 6. WILL. P. I, 1701, c. 6, —FORCING ON THE TRIAL.

n riſe to two queſtions. The one is, whether it qualifies erb "*fixing*," or the ſubſtantive "*diet for trial*," which ediately precedes it; that is, whether the trial itſelf commence, or only the indictment, or criminal letters, iſed and executed within the ſixty days. The other is, her, at all events, the trial muſt commence and be con-d within the immediately ſucceeding forty days; or, if within the ſixty days, may take place at any period, diſtant ſoever; that is, whether the forty days run from xpiration of the ſixty days, on the one hand, making to-r one hundred days, as the *maximum* of the duration of nprisonment, or from the diet of trial, on the other, interval ſoever of impriſonment may intervene betwixt *xtieth* day and the commencement of the trial.

Caſe of Macewan.

TH of theſe, with other queſtions, in this intereſting h of our law, occurred in a caſe of impriſonment, by nt of the magiſtrates of a royal borough, at the in-: of their procurator-fiſcal, on a charge of theft. The ers having applied for letters of intimation, the magi-ı made the uſual order on the procurator-fiſcal for ng on the trial within *ſixty* days. But, on the fifty-ı day, the lord advocate ſerved the priſoners with an in-ent to ſtand trial at the then enſuing circuit; which ılace, not only after the *ſixty* days, but the *forty* alſo, n the *hundred and thirteenth day*. The judges, on the t, referred the cauſe to the court of juſticiary at Edin-. It was *heard in preſence*. Thereafter an inquiry in-: practice, and *informations* were ordered. But a deci-ras avoided; the lord advocate conſenting to the liber-upon the ground that they had already been puniſhed ently by the long confinement [a]. "It may, however,

lexander Macewan and Iſobel r; June 24, and Auguſt 6, elaborate informations which thus have ſerved no other purpoſe but to enrich the books of adjournal with much valuable learning and ingenious diſquiſition, were drawn, that

§ 6. WILL. P. I, 1701, c. 6, —FORCING ON THE TRIAL.

" be conjectured, from this deſertion of ſo capital a point, " that the proſecutor had not been ſanguine in his expecta- " tions of ſucceſs [a]."

1ſt, diet of trial, may it be beyond the *forty* days?

IN this caſe, indeed, where the diet of trial was without the enſuing *forty*, as well as the firſt *ſixty* days, the conſtruction of the public proſecutor would have rendered the regulation almoſt entirely nugatory. The date of the *fixing* of the diet is of little ſignificancy, if it remain as diſcretion-

for the crown by the ſolicitor-general (late lord Henderland), and that for the pannels by Mr. Andrew Croſbie.

The proſecutor argued, that the ſtatute intended only that a *fiat* of court, within *ſixty* days, ſhould fix the diet of trial; or, at moſt, that it ſhould, within that period, be commenced, by raiſing and executing the indictment, or criminal letters. In ſupport of this conſtruction, it was obſerved, that intimation is appointed to be made to the proſecutor, who loſes his right of proſecuting in caſe he diſobeys the act. But it is the province of the court to name the day for the trial. And the ſame jealouſy is not entertained of the judge as of the public proſecutor.

In this caſe, the diet happened to be *thirteen* days beyond the *forty* days, or on the hundred and thirteenth day. But that ardent pleader, and admired maſter of our criminal and conſtitutional law, who conducted the defence, did not take advantage of this ſpecialty to betray, by conceſſions, the general conſtruction of ſo important a ſtatute; he ſtrongly contended, that the diet of trial itſelf behoved to commence within the *ſixty* days; and the *forty* days being allowed to conclude it, as affording ſufficient time for whatever delays or adjournments might be neceſſary, care was thus taken to prevent a pannel, in almoſt any caſe, ſuffering longer impriſonment than *one hundred days*.

[a] Hume, vol. iii, p. 173.

As it is ſo extremely important to diminiſh the queſtionable points of the criminal law, and, as far as poſſible, attain certainty where our lives and fortunes are concerned, the juſticiary records cannot be peruſed without having frequent cauſe to regret the cuſtom of the public proſecutor, to avoid a deciſion when not likely to be in his favour. After iſſue joined, and proceeded in ſo far with the neceſſary effect of intereſting and unhinging the public mind reſpecting an important point, the country may be thought to have a ſort of *jus quæſitum* to obtain the opinion of the court. In particular, the caſe in queſtion, ſo eminently prepared by the bar, could not have undergone the deliberation and deciſion of the bench, without fixing the meaning of that important clauſe, and ripening and maturing the criminal law of the country.

4

§ 6. WILL. P. R. 1701, c. 6, —FORCING ON THE TRIAL.

before; to delay the *trial itſelf*, and the priſoner's con-
nt for weeks, or months, or years. As to its depend-
the court to fix the diet, of whom the ſame jealouſy
entertained as of the public proſecutor[a], it will occur,
iat at the date of the act, the diet of trial was uſually
y the public proſecutor[b]; ſecondly, at any rate, the ar-
t is not in uniſon with the principle of this virtuous
nich is jealous and diſtruſtful of judge and magiſtrate,
l as of the public proſecutor, in regard to perſonal li-
and anxiouſly ſecures it by fixed rules, excluſive of
i diſcretion altogether.

2d, muſt the diet of trial be within the *ſixty* days?

3 other queſtion, whether the diet of trial muſt take
within the *ſixtieth* day is more difficult. The practice
years, it muſt be admitted, ſeems rather to be for
the proſecutor a latitude to make the diet fall with-
ſixtieth day, provided the trial itſelf be concluded
the *fortieth*, counted from the *ſixtieth*, or the *hun-*
in all. However, there ſeems to be reaſon to doubt,
r this practice, were it to be diſputed, would be ſanc-
by the court; for,

1ſt, in two reſpects, it ſeems to be repugnant to the
l conſtruction, according to the collocation of the
1ſt, It ſeparates the limiting words, "within ſix-
ays," from the word "diet" with which the act con-
hem. 2dly, it ſeems not well to tally with the ex-
1, "unleſs the delay be upon the priſoner's petition or
re," occurring likewiſe in this clauſe. A priſoner, on
accounts, may find it neceſſary to move for the delay
diet of trial; but cannot be imagined ever to have
r moving the delay of the *mere fixing* of it, or raiſing
indictment. Accordingly, numberleſs inſtances dai-
ur of the one; while, it is believed, no criminal re-

[a] See p. 464, note, column 1ſt. [b] See *ſupra*, p. 458, note a

§ 6. WILL. P. 1, 1701, c. 6, —FORCING ON THE TRIAL.

cords in the world contain any one example of the other. The *latter* member of the *ſame* clauſe thus removes all ambiguity from the *former*. The *two members* of the *ſame clauſe* muſt be conſtrued conſiſtently with each other. The one ſpeaks of the priſoner's moving to delay,—the other provides for the proſecutor's fixing,—the diet of trial. Both relate to the ſame identical thing. Had the firſt member related, not to the diet of trial, but to the *fixing* merely, the exception relative to the priſoner's delaying the *diet of trial*, would not (in that caſe, prepoſterouſly) have made a *ſecond and co-relative* member of the *ſame* clauſe; but muſt needs have been inſerted in the ſubſequent clauſe.

SECONDLY, in two reſpects it maims and curtails the relief and protection intended by the ſtatute. 1ſt, A trial does not always proceed on the firſt diet. Adjournments, on the motion of either party, or both parties, are often neceſſary. In view of this, the ſtatute introduced the exception, "unleſs "the delay be on the priſoner's petition or deſire." It provided for ſuch neceſſary delays: As it allowed the firſt *ſixty* days for the proſecutor beginning the trial, ſo it allowed the enſuing *forty* for finiſhing it; and for adjournments at either inſtance, or both inſtances, without any riſk of prolonging the impriſonment beyond the *hundred* days. Which humane precaution, if the diet of trial may be poſtponed till the cloſe of the *forty* days, will ſo far be loſt to the priſoner, who cannot then petition for ſuch adjournments as may be neceſſary without lengthening his confinement beyond one hundred days. 2dly, The neceſſity of the diet taking place within the ſixty days, ſecures at leaſt from that delay of trial which ariſes from the hurry, dilatorineſs, or forgetfulneſs, of the public proſecutor, who may fix a diſtant day for a trial, although he would not venture upon adjournments againſt the pannel's oppoſition, in face of the court and of the public.

§ 6.
WILL. P. I 1701, c. 6, —FORCING ON THE TRIAL.

HIRDLY, it ſeems deciſive that it is contrary to the early tice and underſtanding of the public proſecutor after paſſing of the ſtatute. This appears from the juſticiary rds. Seemingly for no other reaſon but the ſuppoſed ſſity of its falling within the ſixty days, the diet appears ave been repeatedly fixed for a day, when there could o probability of its proceeding, and when, of courſe, it adjourned to a ſubſequent day, for which, but for that on, it would have been fixed at the firſt [a].

Day of commencing the trial, is it counted, or *free?*

ANOTHER queſtion concerning the mode of computing e, the ſubject of ſuch ſubtile diſquiſition in our own and Roman law, has occurred in the conſtruction of this ıſe, which enacts, that the "trial ſhall be determined by ı final ſentence within forty days, if before the lords of uſticiary, and *thirty* days if before any other judge." ll the day, then, of the commencement of the trial be nted, or be held to be a *free day* [b]? The firſt of thoſe poſitions was once pleaded in arreſt of judgment, when morials were ordered. But a deciſion was prevented by a don to the pannel [c].

An example of this occurs in the : of Robert Graham, tried for der, December 10, 1712. From minute-book the letters of inti- ion appear to have been ſigned h Auguſt 1712, and probably were nated the day after, viz. 27th ruſt. The 24th day of October ng the *fifty-ninth* from the intima- , and the SIXTIETH from the : of the letters), was fixed for the l. This happening to be in the : of vacation (within ſix days of winter ſeſſion), when the judges ably were not in town, the trial not go on upon that day, but continued by lord Royſton to the 3d day of November. This day, which juſt brought it within the limits of the ſeſſion, would doubtleſs have been originally fixed, had it not then been underſtood that the diet behoved to fall within the ſixty days. Sir James Stewart was lord advocate at this time.

[b] In legal or judicial proceedings, in this country, ſummonſes, charges, &c. it is ſaid the *firſt day is free*; but the meaning is, that the days are only to run from midnight of that day on which the ſummons is executed, charge given, &c.

[c] 1739, Thomſon. See Maclaurin, No. 45.

§ 6. WILL. P. I, 1701. c. 6, —FORCING ON THE TRIAL.

THUS, then, the priſoner has it in his power to bring his trial, and get it concluded within the periods abr mentioned. As obſerved under the former proviſions of ſtatute, the priſoner muſt intimate his demand to the pe who is intereſted in preventing his liberation, viz. tc public proſecutor, if he alone has brought the proceſs, likewiſe to the private party, if it be at their joint inſtanc at the inſtance of the latter, with concurrence of the for

Intimation, to whom?

ACCORDINGLY, in one caſe, where this had been omi and intimation made only to the public proſecutor, the c of juſticiary "refuſe to ſet the priſoner at liberty, in rel "that no intimation was made to the perſon appearin "the warrant of commitment to be concerned, in term "the act of parliament 1701 [a]."

BUT as this neceſſity of finiſhing the trial within f days was, like the other proviſions, intended as a protec againſt oppreſſive views in the public proſecutor, it equally proper to prevent ſo valuable a privilege from b abuſed by guilty priſoners moving for ſucceſſive delays, f not to leave the public proſecutor a ſufficient period for c cluding the trial within the ſpecified time. Wherefore

Forty days excluſive of the pannel's own delay.

forty days muſt be reckoned excluſive of thoſe delays have taken place "upon the priſoner's petition or def "It ſeems, however, to be neceſſary, that the pannel's "queſt of a delay appear in ſome plain and ſpecial form "the record; for it will not ſerve this purpoſe that he "ſimply moved ſome plea on which the court heſitate, "take farther time to be reſolved, or order additional a "ments, or inquiry [b]."

If the proſecutor diſobeys the intimation.

LET us next conſider what is the conſequence of the p lic proſecutor not obeying the intimation by raiſing and

[a] John Cameron, July 15, 1713. [b] Hume, vol. iii, p. 174.

§ 6. WILL. P. I, 1701, c. 6, —FORCING ON THE TRIAL.

ecuting proceſs, and bringing the trial to a concluſion within the above reſpective periods. This is expreſſed by the fourth clauſe, though not in ſuch a manner as to be free from all ambiguity.

"IF no proceſs be raiſed and execute within the time al-'lowed, or in caſe of not inſiſting at the diet, and bring-'ing the ſame to a concluſion within the foreſaid ſpace," he purſuer is directed to apply to the court of juſticiary, or 'other judge competent," (for trial of the crime), who, within twenty-four hours, muſt iſſue out their letters, or precepts, for ſetting him at liberty, under the pains of wrongous impriſonment.

Mode of obtaining liberation.

IN the application he muſt ſet forth, "that the time li-"mited for inſiſting or concluding the proceſs, is elapſed." That is, firſt, if no indictment, or criminal letters, have been at all raiſed and executed, then the priſoner is intitled to make this application on the expiration of *ſixty* days from the date of the intimation. Secondly, if the conſtruction above ſubmitted be juſt, the ſame will be the caſe if the *ſixty* days elapſe without the diet of trial taking place; or, thirdly, if the trial be not brought to a concluſion within the enſuing forty days, then, at the expiration thereof, this application is in that caſe competent.

1ſt, if no proceſs raiſed and executed within ſixty days.

2d, if indictment raiſed and executed within the ſixty days.

Recommitment.

THIS liberation, however, appears from clauſe ſixth, not to be a bar againſt a future commitment and trial for the ſame offence. This is unqueſtionably, and moſt reaſonably, the caſe, as to the priſoner who has eſcaped at the expiration of the *ſixty* days, from no proceſs having been raiſed and executed againſt him. The queſtion is, whether it be equally competent to commit the priſoner anew, whoſe trial had commenced, though it was not concluded, within the *forty* days. He obviouſly ſtands, in more than one reſpect, in ſo different a

§ 6. WILL. P. I, 1701, c. 6, —FORCING ON THE TRIAL.

predicament from the other [a], that the ſtatute might very reaſonably have made ſuch a diſtinction between them. Which difference in their caſes, however, and the abſtract juſtice and equity of the thing, rather than the natural conſtruction of the words, ſeem to have ſuggeſted the doubt [b].

Qualification in recommitting.

New criminal letters.

THIS ſecond commitment is not admitted without qualifications. There muſt be new criminal letters; the trial muſt be before the court of juſticiary; it muſt be concluded within forty days, otherwiſe the priſoner is liberated, never again to be troubled under the ſame charge; which limitations have been always critically conſtrued in favour of the pannel. Thus, as the ſtatute uſes the term *new criminal letters*, the objection was ſuſtained to a recommitment, that it was on an *indictment* which had been raiſed within the *ſixty* days [c].

IN the caſe of a recommitment under this clauſe, the act "ordains his majeſty's advocate to inſiſt in the ſaid libel, "and proſecute the ſame to final ſentence, within forty "days after the ſaid priſoner is of *new incarcerate* thereupon, "unleſs the delay be upon the application," &c. What is the meaning of the words "*of new incarcerate?*" Does the

[a] One material difference it would occaſion between their caſes. A priſoner, againſt whom no criminal proceſs has been raiſed, cannot be confined longer than one hundred days, but one in the other predicament might be confined for one hundred and forty days.

[b] See the arguments on both ſides very candidly and ſatisfactorily ſtated, Hume, vol. iii, p. 174.

[c] Jackſon, September 1793. The judges on the circuit at Glaſgow, found, "that in reſpect the pannel "was at liberty in reſpect of a war"rant from the high court of juſti"ciary, proceeding on letters of in"timation, it is not competent to "bring him to trial on a common "indictment, and that no trial can "proceed againſt the pannel on this "indictment; and ordain him to be "inſtantly ſet at liberty, and diſ"miſſed from the bar." A ſimilar judgment was pronounced by the judges on the Perth circuit. April 21, 1801, in the caſe of John Macinnes.

ition of ending the trial in *forty* days hold if the be not actually incarcerated, but left at large, either without caution? This point having occurred in a he circuit, was referred by the judges to the court iary at Edinburgh[a]; but the trial was afterwards on the lord advocate's motion.

§ 6. WILL. p. 1, 1701, c. 6, —FORCING ON THE TRIAL.

of John Macinnes.

ts may be ſtated ſhortly. is, and thoſe other points this man's caſe was al- ted, it ſuggeſts ſome other which have not yet been diſcuſſed.

:s, on the 29th of Decem- was committed to priſon t of the ſheriff of Perth- he inſtance of the procu- , on a charge of ſheepſteal- ary 23, 1801. Applica- ade by him to the ſheriff, letters for intimating to urator fiſcal of court, and oncerned, to fix a diet for in terms of the act 1701." order was made in terms ervice thereof, made at the ouſe of the procurator-fiſ- anuary, whence, therefore, days began to run, and th March. On the 26th etition was given in to the aving liberation in conſe- the expiry of the ſixty April, the ſheriff "or- the procurator-fiſcal this ſhew cauſe why the pray- e petition ſhould not be ;" and 2d April granted f liberation, "in ſo far as onfined by virtue of the , on the petition and in- n of the fiſcal." But on the 1ſt April he had been arreſted in priſon on a precept iſſued on the Porteous roll, containing an indictment, ſerved on him on the 28th March preceding, to ſtand trial at the lord advocate's inſtance. April 3d, he petitioned the ſheriff to liberate him on bail; and which being found, he was liberated, 6th Auguſt. April 21, The judges, on the circuit, found it incompetent to try on a common indictment. Spring 1802. Criminal letters were raiſed againſt him; which were diſmiſſed by the judges on the circuit, on account of irregularity in the citation. Autumn 1802, new criminal letters were raiſed. He pleaded the benefit of the act 1701; and "the lord-juſtice-clerk and lord "Methven having conſidered the ob- "jections offered to this libel, with "the anſwers thereto, they refer the "whole cauſe, and certify the ſame "to the high court of juſticiary, to "meet at Edinburgh the 15th day "of November next; and in the "meantime, the ſaid lords diſmiſs "the panel from the bar; but or- "dain him to attend the high court "of juſticiary to meet at Edinburgh "on the ſaid 15th day of November "next." Informations were accordingly written; but no judgment was pronounced, the cauſe being deſerted on the lord advocate's motion; 12th July 1803.

§ 6. WILL. P. I, 1701, c. 6, —EXCEPTIONS. Treaſon.

IN the caſe of treaſon, the act contains this ſpecial exception, that the priſoner ſhall not have acceſs to apply for prefixing a diet for proceſs for forty days after his impriſonment, which, in that caſe, are allowed for preparing the proceſs.

Forgery.

AND in the caſe of a trial for forgery before the court of ſeſſion, though the ſtatute has not expreſsly excepted it, the limitation, with reſpect to the endurance of the trial, cannot well take place, and judgment has been given more than once to that effect [a].

Perſonal diligence.

THE ſtatute expreſsly declares, that it does not apply in the caſe of impriſonment in virtue of perſonal diligence, or for payment of debt; nor in the caſe of colliers and ſalters, who were *ſcriptæ glebæ*. But their ſtate was altered by 15 Geo. III, c. 28, in virtue whereof they are now bound only as common labourers.

Colliers, &c.

Arreſt to keep the peace.

THE ſtatute farther excepts the caſe of inferior magiſtrates, judges, or juſtices of peace, and conſtables, taking ſecurity of perſons for their good behaviour, and keeping the peace, agreeably to former uſage, or to impriſon, in order to trial, for indignities done to them. It allows them, as before, to impriſon parties contumacious and diſobedient to church cenſures, vagabonds, and maſterful beggars; or to impriſon for riots, bloodwits, and batteries; or perſons found acting in tumults; or for drunkenneſs, ſabbath-breaking, and ſwearing; uncleanneſs, pickeries, and thieving. But this relates only as to the formalities in arreſting; for ſuch perſons are intitled to bail, and to force on their trial, as well as other culprits.

Diſobedience to church cenſures.

Riots, &c.

[a] Kilkerran, 1748, July, v. Delinquency; and Feb. 24, 1737, Advocatus againſt Rennie. Clerk Home. Hume, vol. iii, p. 175.

AND, laſtly, it is expreſsly provided, "that in the caſe of imminent or actual invaſion, rebellion, or inſurrection," mmitments may proceed by order of the privy council, or y five of their number, upon ſuſpicion of being acceſſory reto, without being liable to any pains. § 6. WILL. P. 1701, c. 6, —EXCEPTIONS.

THE firſt deciſion [a] that was pronounced by the court of

January 5, 1704. The lord-juſ-clerk reported Mr. Adam Pea- *contra* John Allan, and the other ;iſtrates of Stirling. Mr. Adam, nerly epiſcopal miniſter at More-k, near Kelſo, being depoſed by church-judicatures, ratified by commiſſion of the general aſſem- on a call by ſome of his own vaſion in Stirling, ſets up a meet-houſe there, and in the end of uſt laſt, while he was preaching, : Allan, and others come, and, rupting him, carry him away to n for intruding into their church, e there was no vacancy, con- to the 22d act of parliament , eſpecially he not being quali- y taking the oaths to the queen, eing under the church-cenſure privation. The ſaid Mr. Adam ; after ſome days incarceration, ited by order from the chancel- aiſes a proceſs againſt the magi- s for wrongous impriſonment, ded on the late famous act of ament 1701, libelling 2000l. as penalty for a gentleman, and half a merk *per diem* ſo long as was detained, after his offering , and taking inſtruments againſt n; that there was no ſubſcribed tten information exhibited againſt , nor a written warrant containing the cauſe of his commitment, as by the ſaid act is required.

Anſwered.—Mr. Peacock being depoſed by the church, and not having taken the oaths, his attempting to preach in Stirling, where there was no vacancy, was a public and open violation and tranſgreſſion of the laws, and being taken *in flagrante delicto* by the magiſtrate, he needed no ſubſcribed information; for whom had he to inform but himſelf? 2*da*, he was not in the caſe of the act of parliament, which ſpecially excepts thoſe who are diſobedient and contumacious to church-cenſures, as he was, and allows their impriſonment as before the act; and by the 23d act of parliament 1693, all judges and magiſtrates are commanded to give aſſiſtance in making church-ſentences effectual. 3*tio*, the refuſing of bail is denied, but only he took twenty-four-hours (as the act allows) to adviſe on the penalty; and as to the ſecond offer, there were names indeed given into him, but they were neither preſent, nor any ſubſcribed bond of caution offered to him, as the act requires.

Replied.—As to the ſentence of deprivation, he had an appeal yet depending before the aſſembly (only theſe appeals do not ſtop execution,

§ 6. WILL. P. 1, 1701, c. 6. —EXCEPTIONS.

ſeſſion upon that act, regarded this clauſe; but may be thought perhaps, not to diſcover any portion of the liberal ſpirit that dictated it. The offender was an epiſcopal clergyman. The offence was preaching in an unlicenſed meeting-houſe. The magiſtrate having taken him in the act, *flagrante delicto*, as it was termed, committed him to priſon, without any ſigned information. Action for the ſtatutory penalty was afterwards brought againſt the magiſtrate. The court found "there was "no neceſſity of a written information in this caſe, ſeeing the "bailie himſelf came to the place where he was contraven- "ing the acts of parliament, and the act of his own depriv- "ation," &c.

—PAINS.

THE ſtatute ordains, that the pains of wrongous impriſon-

and when not inſiſted on are reputed deſerted); and as to his being unqualified, he had taken the oaths to king William, and was ready to do the ſame to queen Anne: and that noble and excellent law being the great charter of our perſonal liberty, muſt not be diminiſhed by quibbles; for it was never intended that an epiſcopal miniſter may be impriſoned ſummarily for preaching the goſpel peaceably, neither ought it to be ranked as a crime; and the act was calculated to bridle the lawleſs and arbitrary power of raſh magiſtrates in caſting people into priſon at their pleaſure; and therefore he ſhould have given a warrant, mentioning the cauſe to the jailor, and the double of it to the party incarcerate; neither ought he to have delayed or refuſed the bail, ſeeing, under that pretence, one may, in defraud of that good law, keep free ſubjects long enough in priſon.

The lords found there was no neceſſity of a written information in this caſe, ſeeing the bailie himſelf came to the place where he was contravening the acts of parliament, and the act of his own deprivation; and that being under church-cenſures, he was in the exception of the act of parliament; and that a ſubſcribed bond of cautionary not being offered, the bailie committed no fault in refuſing to ſet him at liberty, and therefore aſſoilzied them from Mr. Peacock's proceſs, which is the firſt raiſed upon that new act of parliament.

Mr. Peacock having given in a bill againſt this interlocutor, reclaiming on ſundry grounds of law; and the lords, by plurality, having refuſed his bill, and adhered to the former interlocutor, he gave in his appeal for redreſs to the parliament, which was admitted conform to that article of the claim of right relating thereto. (Fountainhall.)

ſhall be 6,000l. Scots for a nobleman, 4,000l. for a land- § 6.
itleman, 2,000l. for every other gentleman and burgeſs, WILL. P. I, 1701, c. 6,
ool. for other perſons; and in caſe any perſon be de- —PAINS.
in priſon after the reſpective days, in manner above
ed for obtaining his liberty, the magiſtrate, judge, or
perſon, detaining him, ſhall be liable, 100l. each day
nobleman, 66l. for a landed gentleman, 33l. 6s. 8d. for
gentlemen and burgeſſes, 6l. 13s. 4d. for others; be-
oſing their offices, and being declared incapable of be-
ain employed.

E act is expreſsly declared to extend to the caſe of all —WHAT IMPRISON-
ements, not either conſented to by the party, or in- MENTS IT
after trial by ſentence; which clauſe ſeems to import MEANS.
ll the *proviſos* ſhall take place in every confinement,
h not in the public priſon [a].

. HUME doubts whether it applies to caſes where the Does it ap-
ement is not ordered by a magiſtrate, and under pre- ply to pri-
of complaint made to him, or proceeding held by him vate priſon-
ers.

was found not to apply to the
g caſe.
ember 26, 1736, Archibald
ell, merchant in Edinburgh,
ilbert Ramſay, bailie in Kel-

ſaid Archibald Campbell ſet
m Edinburgh to London, a-
with Mr. Joſeph Mackenzie;
en they came to Kelſo, an in-
on, ſigned by quarter-maſter
t, &c. was given in to Mr.
, as bailie of that place, ſet-
rth, that Campbell had clan-
ly carried away Mackenzie
is wife and family; and that
likewiſe prevailed upon him
y off ſeveral writs and evidents
eſtate; therefore, praying a warrant to detain Campbell until he ſhould find bail not to carry Mackenzie away with him, and to anſwer to a competent court for what he had already done.

In conſequence of this information, the bailie granted a warrant; in virtue whereof Campbell was incarcerate; but, upon finding bail, he was liberate. After which he brought an action againſt Ramſay for wrongous impriſonment; wherein the lords found his proceedings illegal and oppreſſive; Campbell then inſiſted for the penalties in the act 1701.

"The lords found that this caſe "did not fall under the act of parlia- "ment anent wrongous impriſon- "ment." Clerk, Home.

§ 6. WILL. P. I, 1701, c. 6, —WHAT IMPRISONMENTS IT MEANS.

in that capacity [a]. In one caſe, the act was found by the court of ſeſſion to reach other perſons than magiſtrates [b].

[a] Vol. iii, p. 180.

[b] December 14, 1736, Thomas Paterſon, wright in Glaſgow *contra* John Anderſon, wright in the Gorbals.

In the proceſs at the purſuer's inſtance, againſt the defender, for wrongous impriſonment, a proof having been led; at adviſing thereof, "the lords found the purſuer was "unwarrantably impriſoned, &c. and "that a double of the warrant of "commitment was refuſed to him, "although deſired; and found it "proven that the defender was ac-"ceſſary thereto; and find it not "proven that he had any warrant "for ſo doing; which the lords found "relevant to ſubject him to the pe-"nalties in the act of parliament "anent wrongous impriſonment; "therefore," &c.

The defender reclaimed, upon this ground, that any irregularity he had ignorantly fallen into, ought not to ſubject him to the penalties of the act 1701; becauſe it was intended only to reſtrain the abuſe of power in magiſtrates, or other officers of the law, who are intruſted with the power of committing their fellow-ſubjects to priſon, as is evident from every part of it, particularly the clauſe anent "impriſon-"ment in order to trial, by a war-"rant in writ; the admitting per-"ſons to bail," &c. And likewiſe from the additional penalty over and above the fine; "viz. that perſons "guilty ſhall loſe their offices."—None of which things are applicable to a private perſon, ſuch as the defender, who is clothed with no authority, and who has no office to loſe: neither was there any occaſion to guard againſt encroachments on liberty committed by private perſons, as that is what rarely happens; but when ſuch abuſes do occur, they can be ſufficiently reſtrained by the common rules of law, whereby every riotous or illegal proceeding is liable to be puniſhed.

Anſwered for the purſuer.—The deſign of the act was general, to protect the liberty of the ſubject, which, when encroached upon by a magiſtrate, is no doubt a breach of duty; but it is ſtill an higher offence when committed by a private perſon; as he thereby aſſumes to himſelf a power which is one of the chief characteriſtics of magiſtracy: beſides the clauſe extending this act to all confinement, not either conſented to by the party, or inflicted after trial by ſentence, ſhews that the ſtatute was not intended to be confined to officers of the law; and indeed without that the act would have been very imperfect, if liberty had been ſecured againſt judges, but inſecure againſt private perſons who have no authority at all. Neither does the clauſe anent loſs of office, ſhew that only magiſtrates were in the view of the legiſlature, no more being thereby intended than that the offenders ſhould loſe their office, whether it is an office of magiſtracy or any other whatſomever.

The lords adhered. Clerk, Home.

THE act concludes with forbidding all cloſe confinements, which Mr. Hume underſtands ſolitary and inacceſſible priſonment of any perſon beyond the ſpace of eight days m the time of commitment; as alſo, all tranſportation of perſon forth of the kingdom, by judges, magiſtrates, or ers, except under the warrant of a lawful ſentence, or h conſent of the perſon himſelf given before a judge. § 6. WILL. P. I, 1701, c. 6, —WHAT IMPRISONMENTS IT MEANS. Cloſe confinements.

BUT in all caſes where the party in confinement is in dan- of his life, he gets out on what is called "a bill of of health." But this will come under our notice in the tt book.

END OF THE FIRST VOLUME.

Edinburgh, printed by Mundell and Son.

APPENDIX I.

No. I.

COPY COMMISSION OF THE PEACE.

RGE III, by the grace of God, of the united Salutation.
gdom of Great Britain and Ireland, king, defen-
faith: to our moſt dear ſons and faithful coun-

ı prince of Wales (Here follow other princes of the General nomination at the beginning of the commiſſion for each court.
)ſt reverend father in God, and our faithful coun- archbiſhop of Canterbury, primate and
ın of all England
ll beloved and faithful counſellor
:llor of that part of our united kingdom of Great
l Ireland, called Great Britain
)ſt reverend father in God, and our faithful coun- archbiſhop of York
)ſt reverend father in God and our faithful coun- archbiſhop of Armagh, primate of that
ır united kingdom of Great Britain and Ireland
and
)ſt dear couſins and counſellors. (Here follow the
he members of the privy council)
loved and faithful the lord juſtice general, juſtice
commiſſioners of juſticiary for the time being.
d preſident, and other lords of the ſeſſion for the

COMMISSION OF THE PEACE.

THE lord chief baron, and the other barons of Exchequer in Scotland for the time being

THE advocate general for Scotland for the time being.

THE ſolicitor or ſolicitors general for Scotland for the time being

(HERE follows the nomination of juſtices for the particular county)

GREETING:

Powers of juſtices under the firſt aſſignment.

KNOW ye, that we have aſſigned you jointly and ſeverally, and every one of you, our juſtices, to keep our peace in our county of , and to keep, and cauſe to be kept, all the ordinances and ſtatutes for the good of our peace, and for the preſervation of the ſame, and for the quiet rule and government of our people, made in all and ſingular their articles in our ſaid county (as well within liberties as without), according to the force, form, and effect of the ſame; and to chaſtiſe and puniſh all perſons that offend againſt the form of thoſe ordinances or ſtatutes, or any one of them, in the aforeſaid county, as it ought to be done according to the form of thoſe ordinances and ſtatutes; and to cauſe to come before you, or any one of you, all thoſe who, to any one or more of our people concerning their bodies, or the firing of their houſes, have uſed threats, to find ſufficient ſecurity for the peace or their good behaviour towards us and our people; and if they ſhall refuſe to find ſuch ſecurity, then them in our priſons, until they ſhall find ſuch ſecurity to cauſe to be ſafely kept.

Second aſſignment.

WE have alſo aſſigned you, and every two or more of you, of whom any one of you the aforeſaid (here the juſtices before named are again mentioned) we will ſhall be one, our juſtices to inquire the truth more fully according to the law and cuſtom of the land, of all and all manner of felonies or capital crimes, poiſonings, inchantments, ſorceries, art, magic, treſpaſſes, foreſtallings, regratings, ingroſſings, and extortions whatſoever, and of and all ſingular other crimes and offences, of which the juſtices of our peace may or ought lawfully to inquire, by whomſoever, and after what manner ſoever, in the ſaid county, done or perpetrated, or which ſhall happen to be there done or attempted. And alſo, of all thoſe who, in the aforeſaid county, in companies againſt our peace, in diſturbance of our people, with armed force,

or rode, or hereafter ſhall preſume to go or ride : COMMIS-
f all thoſe who have there lain in wait, or hereaf- SION OF
eſume to lie in wait, to maim, or cut, or kill our THE PEACE.
id alſo, of all victuallers, and all and ſingular
ns who in the abuſe of weights or meaſures, or
victuals againſt the form of the ordinances and
any one of them, therefore made for the com-
it of our people, have offended, or attempted, or
hall preſume to offend or attempt: and alſo of all
iliffs, ſtewards, conſtables, keepers of gaols, and
ers, who in the execution of their offices about
es, or any of them, have unduly behaved them-
ereafter ſhall preſume to behave themſelves un-
ave been, or ſhall happen hereafter to be, careleſs,
negligent in our aforeſaid county; and of all and
rticles and circumſtances, and all other things
that concern the premiſes, or any of them, by
r, and after what manner ſoever, in our afore-
y, done or perpetrated, or which hereafter ſhall
en to be done or attempted in what manner ſo-
to inſpect all indictments or libels whatſoever ſo
, or any of you, taken or to be taken, or before
our juſtices of the peace in the aforeſaid county,
ken, and not yet determined; and to make and
roceſſes thereupon againſt all and ſingular the per-
dicted or accuſed, or who before you hereafter
en to be indicted or accuſed, until they can be
ender themſelves, or be outlawed, or declared re-
to hear and determine all and ſingular the felo-
l crimes, poiſonings, inchantments, ſorceries, arts,
paſſes, foreſtallings, regratings, ingroſſings, extor-
wful aſſemblies, indictments aforeſaid, and all and
her the premiſes, according to the laws and ſta-
e kingdom, as in like caſe it has been accuſtom-
t to be done; and the ſame offenders, and every
r their offences, by fines, ranſoms, amerciaments,
, and other means, as according to the law and
the land, or form of the ordinances or ſtatutes
t has been accuſtomed, or ought to be done, to
d puniſh.

ED always, that, if a caſe of difficulty, upon the Exceptions,
ion of any of the premiſes before you, or any two or reſtraint.

COMMISSION OF THE PEACE.

or more of you, ſhall happen to ariſe, then let judgment in nowiſe be given thereon before you, or any two or more of you, unleſs in the preſence of one of our juſtices, or one of our juſtices appointed to hold courts of circuit, in the aforeſaid county.

Charge to the juſtices;

AND therefore we command you, and every of you, that to keeping the peace, ordinances, ſtatutes, and all and ſingular other the premiſes, you diligently apply yourſelves; and that at certain days and places which you, or any ſuch two or more of you (as is aforeſaid) ſhall appoint for theſe purpoſes, into the premiſes you make inquiries, and all and ſingular the premiſes hear and determine, and perform and fulfil them in the aforeſaid form, doing therein what to juſtice appertains, according to the law and cuſtom of the land, ſaving to us the amerciaments, and other things to us therefrom belonging.

to the ſheriff.

AND we command, by the tenor of theſe preſents, our ſheriff of the ſaid county of , that at certain days and places which you, or any ſuch two or more of you (as is aforeſaid) ſhall make known to him, he cauſe to come before you, or any ſuch two or more of you, as aforeſaid, ſo many, and ſuch good and lawful men of his bailiewick (as well within liberties as without) by whom the truth in the premiſes ſhall be the better known and determined.

WE alſo command the keepers of the rolls of our peace in our county aforeſaid, to bring before you, at the days and places aforeſaid, the writs, precepts, proceſſes, and indictments aforeſaid, that they may be inſpected, and by a due courſe determined as is aforeſaid. In witneſs whereof, we have cauſed theſe our letters to be made patent. Witneſs ourſelf, at Weſtminſter, the day of , in the year of our reign.

(Signed by the ſecretary of ſtate for the time.)

No. II.

SSION OF THE PEACE, IN LATIN, FROM LAMBARD, B. I, § 8; AND DALTON, C. 5.

GIUS, Dei gratia, Britaniarum rex, fidei defenſor,

IS, quod aſſignavimus vos, conjunctim et diviſim, ibet veſtrum, juſticiarios noſtros ad pacem noſtram, ıtu noſtro, conſervandam: ac ad omnia ordinationes ı pro bono pacis noſtræ, ac pro conſervatione ejuſ- pro quieto regimini et gubernatione populi noſtri omnibus et ſingulis ſuis articulis, in dicto comita- ɔ, tam infra libertates, quam extra juxta vim for- effectum eorundem, cuſtodiendum et cuſtodiri fa- . Et ad omnes contra formam ordinationum, vel m illorum, aut eorum alicujus in comitatu prædic- quentes, caſtigandum et puniendum, prout ſecun- nam ordinationum et ſtatutorum illorum fuerit fa- , et ad omnes illos qui alicui, vel aliquibus de po- tro de corporibus ſuis, vel de incendio domorum ninas fecerint, ad ſufficientem ſecuritatem de pace, geſtu ſuo, erga nos et populum noſtrum inveniен- ım vobis, ſeu aliquo veſtrum, venire faciendum, et nodi ſecuritatem invenire recuſauerint) tunc eos in (quouſq. hujuſmodi ſecuritatem inuenerint) ſaluo faciendum.

NAVIMUS etiam vos, et quoſlibet duos, vel plures, (quorum aliquem veſtrum, A, B, C, E, F, &c. è volumus) juſticiarios noſtros, ad inquirendum per tum proborum et legalium hominum de comitatu (per quos rei veritas melius ſciri poterit) de om- omnimodis feloniis, veneficiis incantationibus, for- ırte magica tranſgreſſionibus, forſtallariis, regrata- oſſariis, et extortionibus quibuſcunq. Ac de omni- ıgulis aliis malefactis et offenſis, (de quibus juſti- is noſtræ legitime inquirere poſſunt autdebent) per ı. et qualitercunque, in comitatu prædicto factis, The ſecond clauſe.

LATIN COMMISSION.

ſive perpetratis, vel quæ impoſterum ibidem fieri, vel attemptari contigerit: ac etiam de omnibus illis qui in comitatu prædicto, in conventiculis contra pacem noſtram in perturbationem populi noſtri, ſeu vi armata ierunt, vel equitauerunt, ſeu impoſterum ire, vel equitare præſumpſerint: ac etiam, de omnibus his qui ibidem ad gentem noſtram mayhemendam, vel interficiendam in inſidiis jacuerunt, vel impoſterum jacere præſumpſerint: ac etiam de hoſtellariis, et iis omnibus et ſingulis perſonis, qui in abuſu ponderum, vel menſurarum, ſine in venditione victualium, contra formam ordinationum vel ſtatutorum, vel eorum alicujus, inde pro communi vitilitate regni noſtri Angliæ, et populi noſtri ejuſdem editorum, deliquerunt, vel attemptauerunt, ſeu impoſterum delinquerunt, vel attemptare præſumpſerint, in comitatu prædicto: ac etiam, de quibuſcunque vicecomitibus, balliuis, ſeneſchallis, conſtabulariis, cuſtodibus gaolarum, et aliis officiariis, qui in executione officiorum ſuorum (circa præmiſſa ſeu eorum aliqua) indebite ſe habuerunt, aut impoſterum indebite ſe habere preſumpſerint, aut tepidi, remiſſi, vel negligentes fuerunt, aut impoſterum fore contigerit, in comitatu prædicto: et de omnibus et ſingulis articulis et circumſtantiis, et aliis rebus quibuſcunque, per quoſcunque et qualitercunque in comitatu prædicto factis ſive perpetratis, vel quæ impoſterum ibidem fieri, vel attemptari contigerit, qualitercunque, præmiſſorum, vel eorum alicujus, concernentibus plenius veritatem.

Et ad indictamenta quæcunque ſic coram vobis ſeu aliquibus veſtrum capta, ſive capienda, aut coram aliis nuper juſticiariis pacis in comitatu prædicto facta ſine capta (et nondum terminata) inſpiciendum, ac ad proceſſus inde verſus omnes et ſingulos ſic indictatos, vel quos coram vobis impoſterum indictari cotigerit, (quouſque capiantur, reddant ſe, vel utlagentur) faciendum et continuandum.

Et ad omnia et ſingula felonias, veneficia, incantationes ſortilegia, artes magicas, tranſgreſſiones, forſtallarias, regratarias, ingroſſarias, extortiones, conuenticula indictamenta prædicta, cæteraq. omnia et ſingula præmiſſa ſecundum leges et ſtatuta regni noſtri Angliæ, prout in hujuſmodi caſu fieri conſueuit, aut debuit) audiendum et terminandum: et ad eoſdem delinquentes, et quemlibet eorum, pro delictis ſuis per fines redemptiones, amerciamenta foris facturas, ac alio modo (prout ſecundum legem et conſuetudinem regni noſtri

aut formam ordinationum, vel ſtatutorum prædic- LATIN COMMISSION.
eri conſuevit, aut debuit) caſtigandum et punien-

so ſemper, quod ſi caſus difficultatis ſuper detèr- Exceptions, or reſtraint.
e aliquorum præmiſſorum coram vobis, vel aliqui-
bus, vel pluribus veſtrum, evenire contigerit: tunc
ium inde reddendum (niſi in præſentia unius juſti-
ı noſtrorum de uno, vel de altero banco, aut unius
›rum noſtrorum ad aſſiſas in comitatu prædicto ca-
ſſignatorum) coram vobis, vel aliquibus duobus, vel
veſtrum, minime procedatur.

:o vobis, et cuilibet veſtrum mandamus, quod circa The charge to the juſti-
ı pacis, ordinationum, ſtatutorum, et omnium et ces.
m cæterorum præmiſſorum diligenter intendatis:
tos dies et loca, quæ vos, vel aliqui hujuſmodi duo,
s, veſtrum (ut prædictum eſt) ad hoc provideritis,
emiſſis faciatis inquiſitiones et præmiſſa omnia et
udiatis et terminetis; ac ea faciatis et expleatis in
ædicta, facturi inde quod ad juſtitiam pertinet ſe-
legem, et conſuetudinem regni noſtri Angliæ: ſa-
ı amerciamentis et aliis ad nos inde ſpectantibus.

AMUS enim tenore præſentium vicecomiti noſtro, To the ſheriff.
certos dies et loca (quæ vos, vel aliqui hujuſmodi
plures veſtrum, ut prædictum eſt ei ut poteſt ſcire
venire fac coram vobis, vel hujuſmodi duobus, vel
veſtrum (ut dictum eſt) tot et tales probos et le-
ıines de balliua ſua (tam infra libertates, quam ex-
quos rei veritas in præmiſſis melius ſciri poterit et

AVIMUS denique te præfatum militem, cuſtodem To the cuſtos rotulorum.
ı pacis noſtræ in dicto comitatu noſtro: ac prop-
id dies et loca prædicta, brevia, precepta, proceſſus,
amenta prædicta coram te, et dictis ſociis tuis, ve-
s, ut ea inſpiciantur et debito fine terminetur ſicut
n eſt. In cujus rei teſtimonium, &c. Datum, &c.

No. III.

JAMES VI, 11th Parliament, 1587, Ch. 82.

OF THE FORM HOW JUSTICE AIRES SALL BE HALDEN TWISE ZEIRLIE, IN THE MONETHES OF APRIL AND OCTOBER.

Becauſe of the great delay in actiones Criminall, throw the not halding of Juſtice aires, twiſe in the zeir, according to the auncient and lovable ordour, eſtabliſhed be diverſe gude Lawes and Actes of Parliament, maid of before: Conſidering the ordinar Judgement in Criminall cauſes is onely now at *Edinburgh*, quhair particular diettes ar ſett, for certaine ſpeciall and higheſt crimes, the puniſhment of uther offenſes, quhairby the commoun-weill is greatly grieved, left to the Juſtice aires, that very ſendill haldis, and there-throw are becume contemptible. THEREFORE, and for eaſe and reliefe of the ſubjectes, that ar ſa frequently inquieted, be cumming in convocation, to dayes of Law, and to paſſe upon Aſſiſes in *Edinburgh*, quhair the Courtes ar oftimes continued, in hinderance of Juſtice, and to the great trouble and needeles expenſes of the Kings lieges: It is ſtatute and ordained, be our Soveraine Lord, with adviſe of his three Eſtaites, conveened in this preſent Parliament: That Juſtice aires ſall be halden twiſe every zeir, in time cumming, over all the Schires of this Realme, in the Moneth of *April* and *October*: Beginnand in the Moneth of *October* nixt-to-cum, gif conveniently it may be. And be reaſon the mater cannot be ordered, and over-tane at anis, be ony few number, to paſſe ſucceſſively over all the haill Realme, from ane Schire to ane uther, that OUR SOVERAINE LORD, ſall cauſe his Juſtice Generall, make aucht deputies: Or elſe his Hieneſſe ſall make ſa mony, be his awin commiſſion, under the teſtimonial of the great Seale, of ſum of the Senatoures of the Colledge of Juſtice, or certaine weill experimented Advocates, that ar maiſt able to travell, appoyntand twa over every quarter of the Realme, quhilk conteinis ſeven Schireffedomes, or thereby, with ane depute of the Theſaurers, and ane uther of the Juſtice Clerkes. And that the Stewardries, and the Baillieries cum to the head Burrowes of the Schireffedomes, quhairin

they lye: Before the cumming of the quhilks Juſtices deputes, dittay ſall be uptaken, and the perſons indicted arreiſted, in maner hereafter ſpecified. Quhilks Juſtices ſa directed, ſall be received at their entry in the Schire, be the Schireffe principal, or his ſufficient depute. As alſo be the Wardanes, within their Wardanries, and their deputes, being Knights or Gentil-men landed, with the Free halders of the ſame Schireffedome, that ſall be warned be the Schireffe, to that effect, be Proclamation, for conveening at the place and time appoynted: Quhilkis ſall convoye, the ſaids Juſtices deputes, to the head Burgh of the Schire, and accompany them, during their remayning there: And quhill they be out of the bounds of the ſaid Schire, and received be the nixt Schireffe, or his depute. And upon the morning, after the cumming of the ſaids Juſtice deputes, to every head Burgh of the Schire, gif the day be lauchfull: and failzieng thereof, the nixt lauchfull day, they ſall beginne and enſe their aire, call the ſuites, and put the offenders, gif ony bee already in priſon, to the knawledge of ane Aſſiſe. And as they be found culpable, or Innocent, to Miniſter Juſtice upon them, conforme to the Lawes of the Realme. Thereafter to call the pledges and Cautioners of perſones, that hes found ſoverty to underly the Law, the thrid day of the aire, or ſooner, upon fifteene dayes warning. And thirdly, the perſons newly indited and arreiſted, and doe Juſtice likewayes upon them: and that they direct their Precepts for ſummounding of Aſſiſours, ane or maa, ilk perſon under the paine of fourty pounds. And having ended their Juſtice aires: they ſall deliver the extract thereof, ſubſcribed with their handes be indenture, to the Theſaurer, or his depute: Quhilkis ſall cauſe up-take the ſummes, conteined in the ſaid extract, and make compt of the ſummes conteined therein, at the nixt Checker, before the auditour thereof. In the firſt end of quhilk ſummes, ſall be allowed to the Theſaurer or his depute, the charges and expenſes of the Juſtice and Clerkes, as the ſamin ſall be modified and appoynted be the Lords Auditores of his Hieneſſe Checker, or ony five of them. And to the effect that all Executiones and arreiſtmentes requiſite, may be dewly prepared, before the cumming of the ſaidis Juſtice deputes:

JAMES VI, 1587, c. 82, CONCERNING JUSTICE AIRES.

It is ſtatute and ordained, that OUR SOVERAINE LORD, with adviſe of his Chancellar, Theſaurer, Juſtice

JAMES VI, 1587, c. 82, CONCERNING JUSTICE AYRES.

Clerk, ſall nominate and give Commiſſion to honourable and worthie perſons, being knawen of honeſt fame, and eſteemed na mainteiners of evill, or oppreſſion; And in degree, Earles Lordes, Barronnes, Knightes, and ſpecial Gentle-men landed, experimented in the lovable Lawes and Cuſtomes of the Realme, actuall in-dwellers in the ſame Schires, to the number hereafter limited, according to the boundes and quantitie of every Schire: That is to ſay, within the Countries and Schireffedome of *Orknay* and *Zetland*, xiv: within *Innernes* and *Cromarty*, twentie ane: *Narne* ſeven: *Elgin* and *Forre* ſeven: *Bamff*, ſeven: *Aberdene*, twentie ane: *Kincardin* ſeven: *Forfare*, four-tene: *Fife*, four-tene: *Kinroſſe*, ſeven *Clack-mannan*, ſeven: *Perth*, twentie ane: *Striviling*, ſeven *Dumbartane*, ſeven: *Linlithcow*, ſeven: *Edinburgh* principall ſeven: Conſtabulary of *Haddingtoun*, ſeven; *Berwik* vij: *Roxburgh*, four-tene: *Selkirk*, ſeven: *Peblis*, ſeven *Lanark*, four-tene: *Renfrew*, ſeven: *Argyle*, ſeven: *Bute* ſeven: *Air*, twentie ane: *Wigtoun*, ſeven: *Dumfreis*, twentie ane. Quilks ſall be the Kings Commiſſioners and Juſtices, in the furtherance of Juſtice, peace and quietneſſe: To gidder with four of the Councell of every Burgh, within themſelfe: Quhilks ſall be conſtant and continual up-takers of dittay. Givand, grantand, and committand to them full power to take inquiſition, and make Dittay be their awin knawledge: Or be an ſworne inqueſt, or ſworne particular men of all perſones ſuſpected culpable, of the crimes and defaultes conteined in the Table, to be maid be the Theſaurer Juſtice Clerk, and Advocate, annexed to this preſent Act divided in twa ſortes. And all perſones delated as culpable in the firſt degree; The ſaids Judges and Commiſſioners, ſall ather apprehend and commit to waird (gif conveniently they canne) Or els ſall deliver them in the Portuous, to the Crowner of the Schire, every Moneth anis to be arreiſted and put under ſoverty, be him, or his deputes, to the nixt Juſtice aire, to be halden twiſe in the zeir be the Kings Juſtices deputes, directed from his Hieneſſe, in maner before ſpecified. And upon all perſones delated and ſuſpected, as culpable of the uther crimes and defaultes, in the ſecond degree: The ſaids Juſtices and Commiſſioners in the Schires, ſall proceede and do Juſtice themſelves, at their courtes and meetinges, to be kept four times every zeir: That is to ſay, At the firſt day of *Maij*: At the firſt day of *Auguſt*: At the firſt day of *November*, and at the firſt day of *Februar*, or uther

First appointment of juſtices of the peace.

wayes, at ony time; three thereof, then being togidder, and alwayes ſitting in the Tolbuith, of the head Burgh of the ſchire: And that they remaine at every ane of the ſaids four times in the zeir, three dayes togidder, or langer, or ſhorter, as they finde occaſion: with power to them to direct their precepts and portuous, to the Crowners: and their precepts, to Schireffes or Officiars of Armes, to ſummound Aſſiſes, ilk perſon, under the paine of ten poundes. As alſwa to ſend their extractes to the Theſaurer, after every ane of their four meetinges, to the effect, the paines and un-law therein conteined, may be taken up: Quhairof compt, reckning, and payment ſall be maid, at the nixt Checker, and the charges and expenſes of the ſaids Juſtices and Commiſſioners, allowed therein, in ſik quantity, as ſall be modified and appoynted, bee the Lordes of his Hieneſſe Checker, betuixt and the firſt day of *November*, nixt to-cum. And in-caſe of diſobedience or contempt, that they notifie the ſame to the Kings Majeſties deputes, at the ſaids Juſtice airis. And gif they alſwa ſall finde them contemned and diſobeyed ony wayes: to ſignifie the ſame to OUR SOVERAINE LORD, and his ſecreit Councell, quha ſall provide for puniſhment of the contempt, be force, to the terrour and exemple of uthers offendoures, to commit the like in time cumming: And the ſaids Juſtices of baith ſortes, for the ſpace of ane zeir, and further, induring OUR SOVERAINE LORDIS will, to indure. JAMES VI, 1587, c. 82, CONCERNING JUSTICE AYRES.

No. IV.

JAMES VI, 20th Parliament, 1609, Ch. 7.

ACT ANENT THE COMMISSIONERS AND JUSTICE OF PEACE.

FORSAMEIKLE As among the infinite monuments and teſtimonies of his Majeſties true pietie, ſingular wiſdome, ſincere zeale to Juſtice and fatherlie care of his people, the Eſtaites of this Kingdome have not found any bringing mair deſerved commendation and permanent renoun to his Majeſtie, or greater profite, quyetneſſe and comfort to his ſubjects, nor his conſtant perſeverance in his maiſt Religious and prudent reſolution to extirpat the ungodlie, Barbarous 1609, CH. 7.

JAMES VI, 1609, c. 7, CONCERNING JUSTICES OF PEACE.

and brutall cuſtome of deadlie feads, whilk by the i
rate abuſe of many bypaſt ages was become ſa frequ
this Realme, as the ſubjects of greateſt ranke and q
upon every naughtie occaſion of baſe and unworthie c
verſies of neighbourheed, for turves, fold-dykes, fur
marches of lands, fooliſh words or drunken diſcords be
their meaneſt ſervants and dependers, and any other
Countrie, did ſo readilie embrace the protection of th
juſt and unneceſſarie quarrels, as did many tymes i
themſelves and their haill friendſhip in maiſt bloud
mortall troubles, whilk they did proſecute with ſic
and crueltie, as to the extreame perrell of their ſaul
famie of their memoriall, and overthraw of their awn
their adverſaries houſes, did diſtract the Kingdome in
ſite factions, and many tymes furniſhed matter of mai
nitious, ſeditious and Civill warres. The inconven
whereof being manifeſtlie ſene and ſenſiblie felt, ba
the Princes and people of this Realme in many bypa
and earneſtlie ſought to have bene removed, yet the c
tion was ſa univerſall, that the greateſt part prevailling a
the beſt, that cruell Barbaritie hath both continuanc
daily increaſe, untill his Majeſtie bending the excelle
dome and rare graces of his Royall minde (where-wit
hes endewed him mair aboundantlie then any King tha
did raigne in this Iland) againſt that godles, unnatura
beaſtlie Cuſtome, did deviſe and eſtabliſh a maiſt godli
and prudent Law and Ordinance for the courſe to be o
ed, for removing upon equitable and juſt conditior
deadlie feads, whilk then ſtude in great number betwe
maiſt powerfull ſubjects in this Kingdome and thei
men, aſſiſters and partakers: In the execution whereof
having miraculouſlie aſſiſted his Majeſties maiſt haili
juſt intention after exceeding great care and paines ta
his Majeſtie in tryall of the originall cauſes of the ſaic
cords, the true circumſtances of the injuries and loſe
tained by either partie, and in preſcryving due ſatisf
to be indifferentlie made for redres of all bypaſt harm
wranga. His Majeſties admirable conſtancie hes ſa
come all difficulties, that the haill knawne feeds withi
Kingdome being now removed by perfite reconciliation
juſt contentment of all parties having intereſt therei
Majeſties haill ſubjects finds ſik joy and happines i
ſweet frutes of his wiſdome and providence expreſ

hat caſe; that they earneſtie wiſh that his Majeſtie wha hes a cairfullie exterminate that abhominable peſt of deadlie eeds, may in his ſingular wiſdome finde meanes for ever o prevene the reviving of that monſter. Wherein his Maeſtie conſidering that nothing gave ſa great grouth and ſtrength to that bypaſt Barbaritie, as the ſlouth of Magiſtrats in not ſuppreſſing the firſt ſeeds of theſe diſſentions, whilk being ſmall and weake in the beginning, for Peets, Turves, Devits, Fold-dykes, poyndings, neighbourlie marches, injurious words or light brawles were then eaſilie to be ſetled, if diligence and authoritie had bene joyned for repreſſing thereof, whilk being neglected by theſe to whom it appertained; theſe light jarres and inſolences did very oft kindle ſik flames of diſorder, diſſention, rankor and feed, as in many yeares with great ſtreames of bloud, deſolation and ruine of great and auncient houſes and races, could hardlie be quenched. For remeed whereof his Majeſtie and Eſtaites foreſaids, Ratifies and approves the former Act made by his Heighnes, for aboliſhing deadlie feedes in every head, clauſe and Artickle thereof. And farther, ſtatutes and ordeines, that in every Shyre within this Kingdome there ſhall be yearlie appoynted by his Majeſtie ſome godlie, wyſe and vertuous Gentlemen of good qualitie, moyen and report, making reſidence within the ſame, in ſik number as the bounds of the Shyre ſhall requyre, to be Commiſſioners for keeping his Majeſties peace, to whom his Majeſtie with advyce of the Lords of his privie Councell ſhall give power and commiſſion to overſee, try and prevent all ſik occaſions as may breed trouble and violence amongſt his Majeſties ſubjects, or forceable contempt of his Majeſties authoritie and breach of his peace. And to command all perſons in whom they ſhall ee manifeſt intention to make trouble or diſorder, either by athering together of Idle and diſorderlie perſons, or by ublict bearing or wearing of Piſtolets or other forbidden eapons, and ſik other ryotous and ſwaggring behaviour; to inde themſelves and finde caution under competent paines oberſerve his Majeſties peace, and for their compearance fore his Majeſties Juſtice or Lords of his privie Councell, underly ſic order as ſhall be found convenient for puniſhg their tranſgreſſions or ſtaying of troubles and enormis. And if need ſhall be, to requyre the duetifull and edient ſubjects of the Shyre to concurre with them in

JAMES VI. 1609. c. 7. CONCERNING JUSTICES OF PEACE.

Nomination of the juſtices.

Their powers and duty.

JAMES VI, 1609, c. 7. CONCERNING JUSTICES OF PEACE.

preventing all ſic contempts and violences, or for taking wairding of the wilfull and diſobedient authors, committers and foſterers of theſe crymes and diſorders under ſic competent arbitrare paines as his Majeſtie and Lords of his priveCouncell ſhall appoynt for the offenders, and ſik of

Duty of all to aſſiſt them.

Countrie as being requyred ſhall not give their readie and afald concurrance to his Majeſties Commiſſioners in the premiſſes, whereby the ordinare Magiſtrats and Officiares within the Shyres, may be the better aſſiſted, and their abſence, imployments or other impediments mair commodiouſlie ſupplied, without derogation of their juriſdiction or want of readie comfort and Juſtice to the obedient ſubjects within the bounds thereof. Ordeining alſo the ſaids Commiſſioners to give true advertiſement and information to the Lords of his Majeſties privie Councell, Juſtice generall and his deputes, his Majeſties Theſaurer and other Magiſtrats and officers whom it effeits, of the names of ſik faithfull and unſuſpect witneſſes and affyſers to be ſummoned in all crymes and diſorders whilk ſhall happen to fall forth within the ſaids Shyres, as ſhall be knawn to be maiſt meet and able for tryell and probation of the ſame, and for eſchewing that ſik as are either aged, ſeiklie or unable to travell, or ignorant of the facts to be tryed, be not unjuſtlie vexed or unneceſſarlie drawne from their awne houſes and affaires, for matters wherein they are not able to give any light.

No. V.

JAMES VI, 22d Parliament, 1617, Ch. 8.

ANENT THE JUSTICES FOR KEEPING OF THE KINGS MAJESTIES PEACE, AND THEIR CONSTABLES.

PART I.—ANENT JUSTICES.

1617, CH. 8.

I.—OUR SOVERAIGNE LORD, with advand conſent of the Eſtates of Parliament, having conſidethe Articles and Inſtructions given of before by his Majeto the Juſtices and Commiſſioners appointed for keepinghis Majeſties Peace, and to their Conſtables which were p

iis Highnes, and unto the ſaids Eſtates, by the ſaids id deſired to be authorized by decreet and ſentence ent: Hes ratified and confirmed the ſame in manner particularly here ſet down and expreſſed in every article thereof, of the which the tennours followes. ſay. JAMES VI, 1617, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

ommiſſioners and Juſtices of Peace at their firſt upon the Bench, ſhall give the Oath following,

all ſwear, that you as one of the Commiſſioners : of Peace within the Shyre of &c. according to lege, wit and power, ſhall do equal right both to poor conform to the Lawes and Cuſtomes of the Statutes thereof: And that you ſhall not be of ith any perſon in any quarrel or matter depend- you, and that you ſhall every quarter keep the r oftner as you ſhall be required, not having any liment to the contrary: and ſhall faithfully and harge your duetie, as ane Juſtice of his Majeſties ſhall leave nothing undone, that may tend to the n of the ſame. So help you God. Oath of office.

y one Juſtice ſhall have power upon complaint of , being threatned, and fearing to be wronged, to partie complained upon, under ſuch a pecunial eep the Peace, as he ſhall think fitting. As mit him, until ſuretie be found by him, the ſaid alwayes giving his Oath before the Juſtice, that he auſe to dread his harm. And albeit no perſon yet if the Juſtice be credibly informed, of ap- f trouble betwixt any parties, he ſhall binde them e in manner aforeſaid: except the parties declare conſciences, that neither of them doth beare any ther. And all ſuch bands ſhall be kept in record nd hee ſhall make deliverie of the ſame to the e Peace, at the next Seſſion, to be kept and regi- iim. Power of binding to the peace.

any perſon, being charged to make his appear- a Juſtice of Peace, ſhall refuſe or delay with- if the partie bee a landed Gentleman, whoſe d *ten chalders* of victual, or a *thouſand marks* hen the Juſtice (whoſe command is contemned) e the ſame to ſome of the Lords of His Majeſties ſel: to the effect the party of the quality fore- e called and fined for his diſobedience. And if Puniſhment of thoſe refuſing to appear before the juſtices.

JAMES VI, 1617, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

the diſobeyer be of a meaner degree, the Juſtice ſhall hereby have power to command the next Conſtable: or in abſence of a Conſtable, his owne ſervant, or any other perſon, having a warrand in writ, ſubſcrived by the ſaids Juſtice of Peace, with aſſiſtance of the countrey, to bring any ſuch partie before him.

Duty of juſtices, if other magiſtrates neglect to inflict condign puniſhment.

IV.—If either the Sheriff or Bailie ſhall condemne any perſon in a bloodwyte, or otherwiſe convict him in any paine proper for him to impoſe, the Juſtice ſhall have no power of new to fine that offender for that offence: but if they ſhall finde him not condignly puniſhed in regard of the offence committed by him, they ſhall then inform his Majeſties Counſel thereof, that they may take order therewith. And if there be no ſatisfaction made by the Sheriff or Bailie to the partie offended, the Juſtices may modifie a reaſonable ſatisfaction to the partie offended, hee perſuing therefore before them, and if they ſhall finde the ſatisfaction decerned by the Sheriff or Bailie in favours of the ſaid partie offended, not condigne nor anſwerable to the offence, and wrong ſuſtained, then they ſhall alſo informe his Majeſties Counſel thereof, that they may take order therewith as appertaineth.

Colluſive acquittals.

V.—If either Sheriff or Bailie, or other Deputies by colluſion with the delinquent, ſhall ſuffer any perſon guilty to be quited or cleared by an Aſſiſe (the partie once cleared, is not to be brought further in queſtion before the Juſtices) but upon their information, the Judges are to bee called, cenſured, and ſeverely puniſhed by his Majeſties Counſel.

Power of proceeding againſt breakers of the peace, &c.

VI.—The ſaids Juſtices ſhall hereby have power to proceed upon all perſons, committing ryots, and breaking the Kings Peace, under the degree of Noblemen, Prelates, Counſellers, and Senators of the Colledge of Juſtice: and to puniſh and fine according to the quality of the crime, and the eſtate of the offender. And if any of the ſaids perſons being charged to compear before the ſaids Juſtices, ſhall diſobey, the ſummounds being indorſed, the lawful citation verified, and fact proven, the Juſtices ſhall puniſh and fine the not compearing, according to the quality of the crime, and the eſtate of the offender. And for the more clear determination of the order which ſhall bee kept by the ſaids Commiſſioners in the deducing of any ſuch proceſſe. Our Soveraigne Lord, with adviſe of the Eſtates declareth, That it ſhall be lawful to the ſaids Juſtices whenſoever they have any occaſion to move any action againſt parties for committing any

like fact or riot, to refer the firſt ſummonds to the parties Oaths of verity (incaſe of inlake or other lawful probation) who being perſonally ſummoned by that firſt citation, ſhall be holden as confeſt, and decreit to be pronounced againſt him, conform to the libell and ſummonds. And if he be not perſonally ſummoned by the firſt citation, the ſaids Commiſſioners ſhall be holden to cauſe ſummond him of new againe, by a ſecond ſummonds, at his dwelling place: which two citations ſhall be als ſufficient to infer decreit, and ſentence upon the libel againſt him, as if hee were apprehended perſonally. And which ſentençe given after the manner and forme of probation above-written; His Majeſtie with adviſe foreſaid, authorizes and ſuſtaines as good and lawful in themſelves. And concerning theſe perſons of higher degrée, the ſaids Commiſſioners ſhall uſe all their power for preventing and ſtaying of the riots; commanding the attempters in his Majeſties name to ceaſe, and to finde caution for keeping of the peace, and for their compearance before his Majeſties Counſel. And if any perſon, being charged to finde caution, and refuſeth or delayeth to do the ſame, and in the mean time contraveeneth the ſaid charge, by committing of ſome deed betwixt the time of the charge and finding of the caution: nevertheleſſe he ſhall be anſwerable for the paine from the date of the charge, like as if caution had been then found. JAMES VI, 1617, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

VII.—THE ſaids Commiſſioners ſhall put his Majeſties Acts of Parliament to due and full execution againſt wilful Beggers and Vagabonds, ſolitarie and idle Men and Women, without calling or trade, lurking in Ale-houſes, tyed to no certain ſervice, repute and holden as vagabonds: and againſt thoſe perſons who are commonly called Egyptians: and they ſhall puniſh and fyne their recepters, and ſetters of houſes to them accordingly, by ſuch competent paines as is proper to them to enjoyne. Beggars and vagrants.

VIII.—THE ſaids Commiſſioners and Juſtices of Peace, are hereby authorized, with power to give order (as they ſhall think moſt convenient, and with leaſt grief to the ſubjects) for mending of all High-wayes and paſſages, to, or from any market towne or Sea-port within that Shire: and ſhall call before them all ſuch perſons as ſhall ſtraite theſe paſſages or otherwayes (as by caſting of Ditches and fuſeis thorow the Highways.

JAMES VI, 1617, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

ſame) ſhall make thoſe High-wayes noyſome and troubleſome unto paſſengers: and ſhall puniſh and fyne them according to the qualitie of their offenſe. And to the effect it may be known of what breadth all common High-wayes ſhould be to Market townes, Our Soveraine Lord, with advice foreſaid, declares, that the ſame ſhould be of *twentie* foot of meaſure in breadth at the leaſt: and where any are of larger breadth, they ordaine the ſame ſo to remain unaltered or ſtraited: and that the ſaids Juſtices maintaine the ſame, with all other wayes from any town in the Paroch to the Paroch Churches, in the eſtate as they are: and where they finde any neceſſitie of other wayes from any town in the Parochin to Paroch Churches, they ſhall inform his Majeſties Secret Councel thereof, who ſhall give them (after ſufficient information) their direction thereanent: according whereunto they ſhall be holden to proceed. And if any perſon refuſe to concur for mending of high-wayes and paſſages, the ſaid Juſtices ſhall have power to cenſure and puniſh them according to their diſcretion: with proviſion alwayes, that if in their proceedings therein, they uſe ſuch ſeveritie or rigour, as may move juſt complaints againſt them; they ſhall be cenſured therefore by his Majeſties Secret Councel, as appertaineth.

Breadth of highways.

Planting.

Dovecots.

Beehives.

Oath of party.

IX.—THE ſaids Commiſſioners ſhall put his Majeſties Acts of Parliament to Execution, againſt cutters and deſtroyers of Plainting, Green-wood, Orchards, Yeards, Haynings, breakers of Dove-houſes and Coningers, Stealers of Bees and Bee-hyves, uſers of unlawful games with lying dogs, ſlayers of red and black fiſh and ſmolts in forbidden time, Fowlers fowling in other mens lands, makers of moore-burne and moſſe-burne, ſetters of cruves or nets in waters and dammes, having and keeping of cruves and yares in forbidden time: and ſhall proceed againſt them accordingly: And for their better warrand to proceed in the premiſſes, IT is his Highnes pleaſure, that commiſſion ſhall be granted to the ſaids Juſtices of Peace, to try and puniſh the violaters of the ſaids Acts, in the tryal whereof they ſhall proceed by witneſſes, by Oath of partie, and the puniſhment to be inflicted by them, ſhall be a pecunial ſumme, anſwerable to the circumſtance of the offenſe, and the qualitie of the offender; with ſpecial proviſion, that their cenſures and puniſhment ſhall extend againſt none but thoſe againſt whom by the pri-

ledge of their inſtructions they may lawfully proceed, and ſo with proviſion that the ſaid commiſſions be not extend- to any perſons who ſhall be arreſted and conveined for e ſaids crimes before any other ordinary Judges. It is alſo ovided, that the ordinance and power contained in this Ar- le, ſhall no wayes be prejudicial to any other commiſ- ns or rights whatſoever granted to others parties, where- they have power to proceed and cenſure the crimes and ences above-written. JAMES VI, 1617, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

X.—ITEM, they ſhall informe the Kings Majeſties Councel, d his Highneſſe Theſaurer or Advocate, at the leaſt once ry yeare, of fore-ſtallers or regraters of Markets, that or- r may be taken with them conforme to the Acts of Parlia- nt. Foreſtallers.

XI.—IT ſhall not be licenced to any Hoſtler to recept any ſter-leſſe men and Rebels at the Horne, any vagabounds, or er perſons guilty of knowne crimes, or uſing ſtouth and ſe, under the paines under-written, To wit, *fourty ſhillings* be incurred by them for the firſt fault, *foure pounds* for the ond, and *ten marks* for the third, together with the loſſ- of the libertie of Brewing, the incurrers of the which ns, ſhall be puniſhed according to the order aforeſaid, by Barons and Maſters of the ground whereupon the Hoſt- dwelleth, within the ſpace of fifteen dayes after the nmitting of the fact. And if the ſaids Barons and Here- rs neglect to do the ſame within the ſaid ſpace, it ſhall be rful to the ſaids Juſtices to purſue and fyne the Delin- nts in their Courts, according to the paines foreſaid, and uplift the ſame from them: without prejudice alwayes of atſoever others Acts made againſt the ſaid Hoſtlers in Barons Court-bookes under whom they dwell, bearing higher pain than as is ſet down in this above-written ; and alſo without prejudice of all action criminal or il, competent of the Law, againſt the ſaid Hoſtlers, in caſe y be under the danger thereof, which ſhall not be taken ay by any puniſhment ſet downe, and to be inflicted, con- me to this Act. Hoſtlers receipting vagabonds.

XII.—ITEM, they ſhall informe the Kings Theſaurer and dvocate, of breakers and contraveiners of the Acts of Parlia- ent made againſt Malt-makers, that the tranſgreſſours and ontraveiners thereof may be puniſhed, conforme to the ten- our of the ſaids Acts. Maltmakers.

JAMES VI, 1617, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

XIII.—THEY ſhall ſet down order in the Countrey for governance in time of Plague, and ſhall puniſh ſeverely the diſobeyers of the order appointed by them, according to the quality of the delict.

Plague.

XIV.—THEY ſhall appoint at their Quarter-Seſſions, to be kept in *Auguſt* and *February*, the ordinare hyre and wages of Labourers, Workmen and Servants, and who ſhall refuſe to ſerve upon the price ſet down by them, ſhall be impriſoned, and further puniſhed at their diſcretion. And to the effect, that ſervants may be the more willing to obey the ordinances to be made by the ſaids Juſtices and the ſaids fees, the ſaids Juſtices ſhall have power to diſcerne, and compel the Maſters to make payment of the fees appointed by their ordinance, incaſe the Servants pleaſe rather to purſue for the ſame before them than any other Judge.

Servants wages.

Priſons.

XV.—THE ſaids Commiſſioners ſhall take notice in all Scherrifdomes where there are any Goalles and Priſon-houſes within any Burgh, that the ſame may be kept up, and not ſuffered to decay or become ruinous. And if there be any Shire where there is not any Goalle or Priſon-houſe, they ſhall inform his Majeſties Councel thereof, that they may appoint and give order for building of one within the head Burgh of the Shire, and according to the directions to be given there-anent, the Juſtice ſhall be holden to proceed.

Poor priſoners.

XVI.—AND becauſe there be a great many of Priſoners apprehended and committed, who having no meanes of their owne for their maintenance and entertainment, will otherwiſe famiſh and ſterve before they can come to their tryal: who not the leſſe in regard of the crimes they have committed, can no wayes be put under ſurety, or otherwiſe in faults of leſſe conſequence, are unable to finde ſufficient caution to be made forth-coming and anſwerable at the next Seſſion. Therefore it ſhall be lawful to the ſaids Commiſſioners and Juſtices at their Quarter-Seſſion, to rate every Parochin for a weekly proportion for the entertainment of thoſe poor Priſoners, providing they do not exceed the ſumme of *five ſhillings* Scots money, at the moſt, nor under *one ſhilling* at the leaſt: which ſumme ſhall be up-lifted for that uſe by the Miniſter or Reader, who ſhall ſerve at every Paroch, from ſuch Deacons who ſhall be appointed to collect the ſame: and the ſaids ſums to be delivered by the Conſtable of the Paroch, at the Quarter-Seſſions, in preſence of the whole Bench

conveened, to ſuch perſons as the ſaids Juſtices ſhall therewith, and who accordingly ſhall make due ac- it in paying the Goalers ſuch rates as ſhall be allowed the poor Priſoners, and making the reſt forth coming uch uſe and intent of the like nature, as the ſaids Juſti- hall appoint. JAMES VI, 1607, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

VII.—ALL Magiſtrates of Burghs, and keepers of any es or Priſons, ſhall receive into their Priſons all ſuch per- as either ſhall be brought by Conſtables, or ſent unto by warrands, under the hand of any one Juſtice of e (the ſaids Juſtices cauſing ſatisfie for their entertain- t) and if any Magiſtrates, or their Gailers, ſuffer any per- committed by the Juſtices to their priſons, to eſcape, ſhall be condignly puniſhed therefore, at the diſcretion Majeſties Councel. Eſcape of priſoners.

VIII.—ITEM, Our Soveraigne Lord with advice foreſaid, ins the ſaids Commiſſioners to ſet a price upon Crafts- s work, and upon the ordinars of Penny-Brydals, toge- with the price of Shearers fees, and to puniſh the con- eners as appertaineth. Craftſmens work, &c.

IX.—THEY ſhall cauſe ſufficient ſingle and double Ale brewed in every Shire, and ſhall appoint viſitors to that t, with conſent of the Baron and Over-Lord of the nd. They ſhall ſet down Acts againſt notorious and non Drunkards, and impoſe ſummes upon the contra- ers, according to their qualities and deſerts. Ale.

X.—OUR Soveraigne Lord, with advice aforeſaid, declar- hat three Juſtices of Peace ſhall be a full number and n to decide in matters occurring betwixt the four Quar- eſſions. Quorum.

XI.—ALSO declares, that no Letters of Caption ought to anted againſt the ſaids Juſtices for apprehending of Re- except they be found ſubject to do the ſame by poſ- g of ſuch other Offices and places, to the which the obe- e and putting to execution of any ſuch charges doth g. Rebels.

XII.—AND becauſe there is ſenſible prejudice ſeen and through many parts of the Kingdome, by reaſon of the rſitie of Meaſures and Weights uſed in the ſame, There- OUR SOVERAIGNE LORD, with advice ſaid, for removing of all abuſes, which may enſue in any e to come thereby, Hath found expedient, and by this De- Weights and meaſures.

JAMES VI, 1617, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

creet and Statute of Parliament, decernes, ſtatutes, and daines, That there ſhall be but one juſt Meaſure and Wei through all the parts of the Kingdome, which ſhall univer ly ſerve all his Highnes Lieges, by the which they ſhall ſ and buy, and receive and give out in all times to come which Meaſure his Majeſtie, with advice foreſaid, findes ſhould be that Meaſure of *Linlinthgow*, which is now commonly uſed, and which hath been uſed moſt cuſtomably thorow the greateſt part of the Kingdom theſe fiftie or threeſcore yeeres by paſt. And for ſetling of a perfect order, whereby all the Meaſures that are now uſed may be reduced to the conformitie of the ſaid Meaſure now authorized. And for making of proportion anſwerable betwixt the leſſer meaſure and weights, and the greater, His Majeſty, with advice foreſaid, hath granted full power and commiſſion to Sir *James Weyms* of *Begie* Knight, Sir *George Auchinleke* of *Balmanno* Knight, Sir *James Fowles* of *Colington* Knight, Sir *Robert Stewart* of *Schillinglaw*, Sir *John Vaus* of *Barnbarro* Knight, Sir *William Greirſon* of *Lag* Knight, and to *James Niſbet* Baillie and Burges of *Edinburgh*, Maſter *Alexander Wedderburn* Clerk of *Dundie*, Sir *Thomas Menzeis* Proveſt of *Aberdeen*, *James Hammilton* Proveſt of *Glaſgow*, *John Oſbburn* Burges of *Air*, and Sir *George Bruce* of *Carnok* Burges of *Culros*.

WHOM, or any eight of them, his Majeſty, with adviſe foreſaid, ordaines to meet and conveen together, at ſuch time and place as they ſhall think expedient, and to conſult and adviſe together, and to appoint and determine upon the moſt convenient means, how the ſaids meaſures and weights may be reduced to the conformity aforeſaid. And after they have ripely adviſed therewith, and given forth their determination thereanent, they ſhall deliver the ſame, and whole courſe of their proceedings, to the Commiſſioners and Juſtices of Peace, and to the Deanes of Guylde of the head Burghs of the Shires, who ſhall be holden carefully to do their diligence, to ſee the meaſure foreſaid now appointed, to have the courſe through all partes, as well Burgh as Landward. And that there may be one conſtant conformity betwixt Burgh and Land, OUR Soveraign LORD, with adviſe foreſaid, Ordaines the ſaids Juſtices of Peace in Landward, to take tryall of the meaſures and weights uſed in Burgh, and to take NOTE from the Magiſtrates and Deanes of Guyld of every Town, of th

weights and meaſures, and of the number thereof, which the aids Magiſtrates and Deanes of Guyld in Burgh, ſhall be olden to ſhew, declare, and give up to them, to the effect he ſaids Juſtices to Landward, may confer the ſame with the tandard now authorized, and where they finde any diſcon- rmity in the ſame, from the ſaid Standard, the ſaids Juſti- s ſhall inform the Kings Majeſties Counſel thereof, that ey may take order therewith as appertaineth. For it is ex- eſly provided by theſe preſents that the ſaids Magiſtrates Burgh ſhall not be permitted to have or uſe any moe eaſures within their Townes, than the number to be pro- ſſed by them, and given up in NOTE, to the ſaids Juſtices Landward, as ſaid is. This alwayes being reſpected, that the ſaids Magiſtrates within Burgh finde any neceſſity for wing any moe meaſures then was given up, and uſed by em before, IT ſhall be licenced to them to make moe mea- ures, they being anſwerable and conform to the Standard, nd making the ſaids Juſtices to Landward foreſeen and ac- uainted therewith, and declaring the number of the mea- ures whereof they finde the neceſſity of uſe. JAMES VI, 1616, c. 8, POWERS AND DU- TIES OF JUSTICES OF THE PEACE.

THE ſaids Juſtices ſhall be holden to give command and irection to their Conſtables, to apprehend any ſuch perſon who ſhall be found contemptuouſly to have diſobeyed the enſures of the Church, they being lawfully required to doe he ſame. Church cenſures.

XXIII.—THE ſaids Juſtices of Peace, aſwell to Burgh as and, ſhall conveene and be preſent at the Quarter-Seſſions of he Shire, where the Burgh and Land lyes, give their Oath o the Bench at their admiſſion, make their record, and make ayment of the fines intromitted with by them as Juſtices f Peace of that Shire, and to their Collector. Fines.

XXIV.—THEY ſhall appoint a ſufficient Collector for up- ſting the fines and penalties which they have power to im- oſe upon any offender, and are to take caution of him for aking due accompt. Collector.

XXV.—THEY ſhall have induring the time of Seſſions, r every day of their abode (ſo it do not exceed the num- er of three dayes at the moſt at one time) allowed to every ne of them *fourty ſhillings*, Scots money, daily to be payed nd uplifted by the Collector of the fines, but neither Earle, ord, Biſhop, Privy-counſellour, or Seſſioner, ſhall have any Payment o juſtic

JAMES VI, 1617, c. 8, POWERS AND DUTIES OF JUSTICES OF THE PEACE.

allowance: and all ſuch Juſtices as have the benefit of that allowance, and ſhall be abſent from every ordinary Quarter-Seſſions, or otherwayes when he is required lawfully by the *Cuſtos Rotulorum*, to any particular meeting, ſhall incur the penaltie of *fourty pounds*, Scots money, not being lawfully excuſed, and the excuſe allowed by the reſt of the Juſtices there aſſembled.

XXVI.—THE Lords of Seſſion ſhall direct general and ſummaire charges of horning and poinding at the inſtance of the Collector (appointed in every Country for ingathering of all fines and penalties whatſoever incurred) upon a ſimple charge of fifteene dayes, and no ſuſpenſion ſhall be granted, but upon conſignation of the ſummes contained in the ſentence, and by finding caution for payment of the charges of the Juſtices at the modification of the Lords.

Horning and poinding.

XXVII.—THE ſaids Commiſſioners at the end of every Quarter-Seſſion, ſhall ſend to his Majeſties Counſel a Catalogue of all ſuch perſons as they have either committed, or otherwiſe put under ſurety, with a ſhort abbreviate of the cauſe thereof: to the effect, that thereupon the Counſel, as they ſhall think expedient, may return to them againſt their next Seſſions, or to the *Cuſtos Rotulorum*, in the meane while their further directions.

PART II.—ANENT CONSTABLES.

I.—OUR SOVERAIGNE LORD, with the adviſe of his Eſtates, findes and declares, that the Conſtables are to be made choiſe of, by the Commiſſioners and Juſtices of Peace in their Quarter-Seſſions throughout the whole Countrey, two at leaſt in every Parochin, or moe, according to their diſcretions, having conſideration of the quality thereof. In great townes like-wiſe (not being Cities nor free Burghs) they are to appoint a number of Conſtables proportionally to the greatneſſe thereof: but in all Burghs Regal, and free Cities, the Conſtables are to be choſen by the Magiſtrates of the ſame, and they are to indure, and to be changed from ſix to ſix Moneths.

Appointment of conſtables.

II.—AND who ſhall refuſe to accept the charge, and not give his Oath for dutiful execution thereof, ſhall be im-

iſoned and fined at the diſcretion of the Juſtices of Peace, their next ſitting. JAMES VI, 1617, c. 8, P. 2, POWERS AND DUTIES OF CONSTABLES.

III.—THE conſtables ſhall take the Oath following. You ll ſwear that you ſhall faithfully and truely diſcharge ır office of Conſtabulary within the Parochin of &c. in- ring the time appointed to you, and ſhall not for favour, pect, or fear of any man, forbeare to doe what becom- th you of your office, and above all things you ſhall re- d the keeping and preſerving of the Kings Majeſties ace, and ſhall at every Quarter-Seſſions and meetings of ſtices, give true and due information of any breach, which s been made of his Majeſties Peace, within the bounds of ır commandemant, and ſhall no way hide, cover, nor nceale the ſame, nor any of the proofs and evidences ich you can give for the clearing and proving thereof, So lp you God. Oath of office.

IV.—A CONSTABLE may apprehend any ſuſpect man, who the moſt part ſleepeth all the day, and walketh in the ht, and carry him to the next Juſtice of Peace, to finde ety for his good behaviour, or otherwiſe to be committed priſon: and if he bee a man of quality, the Juſtice of ace ſhall go with the Conſtable, and do it. May apprehend ſuſpicious perſons,

CONSTABLES ſhall ſtay and arreſt all Vagabounds; Sturdy- ggers, and Egyptians, and carry them before the next mmiſſioners of Peace, who ſhall take order for their com- tting, or puniſhment, according the Statute of Parlia- nt. and vagabonds,

V.—CONSTABLES ſhall arreſt all idle perſons, whom they ow to have no meanes to live upon, and will not take mſelves to any labour, trade, or occupation, and ſhall car- them before the Commiſſioner of Peace, who after exa- ination, ſhall either commit them, or take ſurety of them r their appearance at the next Seſſions. idle perſons.

VI.—ANY Conſtable having apprehended a perſon guilty d culpable of ſlauchter, murther, theft, or any other capi- l crime whatſoever, ſhall then require his neighbours to liſt, for ſafe convoying of ſuch perſons to the next Com- iſſioner, who ſhall then examine the party, and ſet down is depoſition in writing, to bee ſhown at the next Seſſions, nd thereafter ſhall ſend him back to priſon. And if a No- leman, Prelate, or ſmall Baron, or any in their names, hav- ng power, ſhall acclaime the right of Juriſdiction to pro- Apprehending and recognoſcing felons.

JAMES VI, 1617, c. 8, p. 2, POWERS AND DUTIES OF CONSTABLES.

ceed againſt the delinquent, The ſaid Juſtice ſhall receive ſurety of the ſaid party, who required the defender to be delivered to him, that Juſtice ſhall be duely miniſtred, and cauſe delivery of the ſaid perſon, be made to him. Alwayes the ſaid Commiſſioner of Peace, at the next Seſſions, ſhall certifie the whole matter to the Bench: to the effect they may enquire whether Juſtice hath accordingly been miniſtred: and if any fault be found, to advertiſe his Majeſties Counſel, that order may be taken therewith.

Every perſon muſt aſſiſt the conſtable.

VII.—ANY of his Majeſtie's Subjects of the degree of Yeomen, who ſhall refuſe or delay to concurre with the Conſtable in the executing of his office, ſhall be impriſoned and puniſhed by the Commiſſioners and Juſtices: and if he be of an higher degree and quality, the Conſtable ſhall inform the Juſtice thereof, that they may make the Lords of Privy Councel acquaint, whom the Eſtates ordaines to cenſure the offender according to the quality of the fault.

What perſons the conſtable may arreſt.

VIII.—A CONSTABLE ſhall arreſt any perſon of the degree of a Yeoman, who ſhall be found wearing Hagbuts, Piſtolets, and Dagges, and ſhall carry them before a Commiſſioner of Peace, who is either to take ſurety for their appearance the next Seſſion, or commit them priſoners till they do the ſame: but if the perſon be of higher quality, the Conſtable ſhall informe the Juſtice thereof, who ſhall delate the ſame to his Majeſties Counſel, that order may be taken therewith.

Threats of breaking the peace.

IX.—IF any party of the degree of Yeomen, do complain to a Conſtable, that he is threatned by any other, then ſhall the Conſtable apprehend the Threatner, and cary him, with the party complainant, before the next Commiſſioner of peace: and if he refuſe to go, then ſhall they carry him to priſon. And if he be of an higher degree, the Juſtice being informed thereof, ſhall informe the Counſel, and in the mean time, charge the party to bind to the peace.

Attending the quarter-ſeſſion.

X.—ALL the Conſtables, at the leaſt one of every Paroch, inſtructed with commiſſion to anſwer for the reſt within the ſaid Paroch, ſhall attend at every Quarter-Seſſion, there to give information of all ſuch miſdemainours as have happened in thoſe bounds ſince the laſt Seſſion; and otherwayes to give to the Bench further ſatisfaction in any thing wherein they ſhall be required: and to receive from the ſaids Commiſſioners, at the end of the Seſſion, ſuch orders

id directions as they ſhall then injoyne, and appoint them doe. JAMES VI, 1617, c. 8, P. 2, POWERS AND DUTIES OF CONSTABLES.

XI.—UPON the appearance of any Fray or ſtir betwixt rties, the Conſtable may take the aſſiſtance of his neighurs, for ſundring of the parties: and if there be any harme ne to the Conſtable, or any of his aſſiſtance, by them who ade the effray, they ſhall be puniſhed by the Juſtices at the xt Seſſion, they being of the quality of Yeomen, and beg of ane higher quality, the Counſell ſhall be informed ereof, as ſaid is.

XII.—WHEN any hath made ane effray, and then flees to a houſe, the Conſtable may follow to the houſe, and if the ors be ſhut, he ſhall take notice of the maſter of the ouſe, and require witneſſe thereon. And albeit the delinuent ſhall flee further without the bounds of the Conſtables harge, yet may the Conſtable follow, and apprehend him in freſh purſuite, and crave concurrence of the Country to hat effect. May he follow the affrayer beyond his bounds.

XIII.—THE Conſtables within every Parochine, ſhall be xecuters of the precepts and warrands of the Juſtice of eace.

XIV.—CONCERNING the Fees and ſatisfaction to be given the Conſtables and Clerks for their paines: OUR Soveigne LORD, with adviſe foreſaid, ordeines the ſaids ſtices to give up particular NOTES in writ to the uditors of his Majeſties Checker, of the fines inbrought to em, that out thereof ſuch meaſure and ſatisfaction may be pointed and given to the ſaids Clerks and Conſtables, as ay recompence their travels, wherein if it ſhall be found at the ſaids fines will not be ſufficient, the ſaids Lords of s Highneſſe Checker, ſhall appoint ſuch further ſatisfaction them, as in their diſcretion they ſhall think their labours nd diligence doth deſerve, and cauſe them to be payed of ie ſame. Fees of conſtables.

AND notwithſtanding of this above-written Act, and all he particulars foreſaids contained in the ſame: OUR Soeraigne LORD, with the adviſe and conſent of the ſaids Eſtates, ſtatutes, decernes, and declares, That neither the rection of the ſaids Commiſſioners and Juſtices of Peace, nd grant of Juriſdiction and Priviledges to them, nor the naking or approbation of the particular Articles above-writen, introduced in their favours, nor any thing therein con- Reſervation in favour of former juriſdictions.

JAMES VI, 1617, c. 8, P. 2, POWERS AND DUTIES OF CONSTABLES.

tained, ſhall be in any ſort derogatory or prejudicial to the Rights, Priviledges, or Liberties granted and beſtowed by His Majeſty, or his Highneſſe Royal Predeceſſours of before to any of His Majeſties Subjects, of whatſoever Eſtate or quality, from the higheſt to the loweſt: But declares, that the ſaids Rights, Priviledges, and Liberties, ſhall remaine in their own integrity ſafe, and intire, and unhurt, or prejudged by the premiſſes or any thing expreſſed in the ſaids Articles, and every one of them, and are holden as ſpecially reſerved and excepted out of the ſame.

AND leaſt this above-written reſervation ſhould ſeem altogether to deſtroy the power, granted to the ſaids Juſtices, or ſhould beget controverſies betwixt them, and any other having right or liberty of Juriſdiction, as ſaid is: OUR SOVERAIGN LORD, with adviſe foreſaid, for removing of all queſtion, which may ariſe betwixt them thereanent, declares, that it ſhall not be lawfull, nor permitted to the ſaids Juſtices, to make any citation of party before their Court, till the expiring of the ſpace of fifteen dayes, after the committing of the fact, for which the committer is to be conveened, at the compleat out-running of which ſpace, if any having power and juriſdiction, as ſaid is, hath omitted and neglected to uſe and exerce the priviledge and liberty of their right and power, it ſhall then be lawfull to the ſaids Juſtices, to make citation, and to proceede againſt the parties, according to the power and authority given to them by his Heighnes, with adviſe foreſaid, and conform to the particular Articles above-written, in all poynts, and no otherwayes.

WHICH all and ſundry the premiſſes, OUR Soveraign LORD with adviſe and conſent foreſaid, ratifies and approves, in all poynts in manner as the ſame proports, and gives unto them the ſtrength and force of Acts and Ordinances of Parliament, and ordeins execution to paſs upon the ſame as effeirs.

No. VI.

CHARLES I, 1ſt Parliament, 1633, *Ch.*

IFICATION OF THE ACTS MADE IN FAVOUR OF THE 'STICES OF PEACE, AND THEIR CONSTABLES; AND)MMISSION TO THE LORDS OF SECRET COUNCIL HEREANENT.

R SOVERAIGNE LORD, and Eſtates of nent, ratifie, approve, and confirme the eight Act of ntie two Parliament, holden by King JAMES the f Eternal memorie, Intitulate, [*Anent the Juſtices for of the Kings Peace, and their Conſtables.*] In the Heads, Articles and Clauſes therein contained, ad- the generalitie hereof to be als valide and ſufficient, ıe ſame were all herein *per expreſſum* ingroſt. Attour jeſtie, and Eſtates foreſaid, give full power, authori- l commiſſion to the Lords of his Majeſties Privy l, to ſet down and impoſe penalties upon ſuch of the ; of Peace as ſhall not keep and obſerve the diets pre- or their ſeveral and particular meetings. And with likewiſe to the ſaids Lords of privie Council to en- ıd amplifie the power and authoritie of the ſaids Juſ- f Peace, if they ſhall finde it neceſſarie and expe- and that they ſhall decrete and determine thereanent, nd declare that the ſame ſhall have the force, ſtrength wer of an Act of Parliament.

No. VII.

T XIIII, ANENT JUSTICES OF PEACE, 29th JUNE 1649.

he 14th Act of the 3d Session of the 2d Triennial Parlia- of Our Sovereign Lord Charles II, by, &c. holden at burgh, beginning 23d May, and ending 7th Auguſt 1649[a].

Eſtates of Parliament conſidering how neceſſary it is peace and good of the kingdom to have Juſtices of

ı the volume, intitled, "Re- l acts," it is deſcribed as the nt of Charles II, whoſe reign is preſumed to have commenced on his father's death.

peace again eſtabliſhed in the ſeveral ſhires and juriſdictions of this realm of Scotland; therefore, they have renewed and ratified, and by theſe preſents renews and ratifies the act of Parliament made anent Juſtices of peace and their Conſtables, in anno 1617, and conform thereto, have nominate and appointed, and nominate and appoints

to be Juſtices of peace within

and gives and grants full power to them to diſcharge that office, and miniſtrat juſtice thereuntil, impoſe, exact fynes from delinquents, and do every other thing according to the power mentioned in the act of Parliament 1617 years, and to the ends therein ſpecified; and in reſpect that, by the foreſaid act of Parliament 1617, the Juſtices of the peace are appointed to make accompt to the Exchequer of the foreſaid fynes, and the Exchequer to modify and grant fees to the conſtables for their pains and expences, and for the other charges whilk will neceſſarily be given out in the diſcharge of their commiſſions, which have been a mean and occaſion in time paſt to make the foreſaid act ineffectual and uſeleſs: therefore, the ſaid Eſtates of Parliament have repelled and reſcinded, and repels and reſcinds that part of the act in anno 1617, anent the making accompt to the Exchequer of the foreſaid fynes, with the power granted by the ſaid act to the Exchequer for modifying the ſaid fees and expences to the ſaids conſtables; and the ſaid Eſtates of Parliament grants power to the ſaid Juſtices of peace to allow ſuch neceſſary charges and expences out of the ſaid fynes as they ſhall find expedient for advancement of the ſervice; and ordains them to be comptable to the Parliament or Committee of Eſtates for the ſame; and becauſe there are ſundry articles in the foreſaid act 1617 that neceſſarily requires to be rectified, which now cannot be conveniently done by the Parliament, therefore they have recommended, and recommends ſeriouſly to the Committee of Eſtates to rectify the ſaid articles as they ſhall find them juſt and neceſſary for the good and peace of the kingdom. And in the meantime, while the ſamen be ratified, they have ordained, and ordains the foreſaid Juſtices of peace to act and proceed in the diſcharge of their office according to the foreſaid act as it ſtands in anno 16:7, and thereafter to act and doe accordingly as the act ſhall be rectified.

No. VIII.

A DECLARATION and ORDER of his Highneſs Council in Scotland, requiring all Perſons to give due obedience to the Juſtices of Peace in execution of the powers and authorities given them by the inſtructions hereunto annexed [a].

1655, OLIVER CROMWELL'S DECLARATION AND ORDER.

THE ſaid Councill having taken into their ſerious conſideration how much it may conduce to the peace and good of this Nation, That Juſtices of peace ſhould be ſettled and reeſtabliſhed in every County and Shire thereof; and finding that by ſeveral acts of the Parliament of Scotland, the ſaid office hath been found needful, and was appointed and eſtabliſhed for preſerving of the public peace, and ſuppreſſing and puniſhing of ſundry miſdemeanours, have found it neceſſary, for the good government of this nation, to appoint certain perſons of ability and fidelity in every county and ſhire in Scotland, to be Juſtices of his Highneſs the Lord Protectors peace; which being accordingly done, the Councill have thought it fit hereby to declare, That they have given Commiſſions to ſuch perſons to be Commiſſioners and Juſtices of his Highneſs peace in the ſaid Counties reſpectively, and authoriſed them to put in execution all the powers and authorities committed to them by certain inſtructions which were agreed upon by the Council, printed by their order, and are hereunto annexed. And as the Council do expect that the perſons intruſted as aforeſaid be careful in the good diſcharge of the truſt repoſed in them for the peace and happineſs of the Nation, ſo the Council will on all occaſions give them all due countenance and en-

[a] Theſe inſtructions of Oliver Cromwell, which have been the ſubject of ſo much commendation, neither appear in Scobell's collection, nor in the volume intitled "Reſcinded Acts," which comes no farther down than the year 1649; nor among the records in the general regiſter at Edinburgh. They are printed from a copy in folio, in the Saxon letter, "publiſhed by authority of his "highneſs council;" being part of the valuable collection of Scottiſh acts and ordinances, and papers touching the law and antiquities of Scotland, in the poſſeſſion of Robert Hamilton, Eſq. advocate.

couragement therein; and the Council do hereby ſtrictly require all people of this Nation, whom it may concern, to take notice and be obſervant of the ſaid inſtructions (in what to them reſpectively appertaineth) as the contemners or contraveners thereof will anſwer the contrary at their perils. And to the end that no perſon may pretend ignorance of them, the Council do hereby order that this declaration, with the ſaid printed papers of the ſaid inſtructions, be forthwith publiſhed at the market croſs of Edinburgh, and in the head Burgh or Town of each Shire in Scotland by the reſpective Sheriffs of the ſaid Shires.

GIVEN at Edinburgh, the 12th day of December, 1655.

PART I.

By his Highneſs' Council in Scotland, for the Government thereof.

INSTRUCTIONS FOR THE JUSTICES OF PEACE IN SCOTLAND.

1655, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

Oath of office.

1, The Commiſſioners and Juſtices of the peace ſhall take the Oath following. You ſhall ſwear, *That you, as one of the Commiſſioners and Juſtices of his Highneſſe the Lord Protectors peace, within the Shire of according to your knowledge and power, ſhall do equal right both to rich and poor; and that you ſhall not be of council with any perſon in any quarrel or matter depending before you, and ſhall faithfully and truly diſcharge your duty as a Juſtice of peace; and ſhall endeavour, according to your power, the preſervation of the ſaid peace; and that you take nothing for your office of Juſtice of peace, but what is, or ſhall be, by the law allowed.*

Adminiſtering the oath.

2, THAT no perſon ſhall execute the office of Juſtice of peace, until he hath taken the oath before mentioned before the Sheriff of the Shire, or before two Juſtices of the peace, who have taken the ſame, who have hereby power to adminiſter the ſaid oath to all other Juſtices who have not taken it, within the reſpective Shires at their reſpective admiſſions.

Time of holding the quarter-ſeſſions.

3, THAT the ſaid Juſtices ſhall begin their quarter Seſ-

ons at the times of the year following, viz. the firſt Tueſ- 1655,
y in the month of February, the firſt Tueſday in the CROM-
onth of May, the firſt Tueſday in the month of Auguſt, WELL'S IN-
: laſt Tueſday in the month of October; at ſuch places STRUC-
ſhall be agreed on by the greater number of them, or (in TIONS
fault thereof) by the appointment of the *cuſtos rotulorum* CONCERN-
the reſpective Counties; and ſhall have power to continue ING JUSTI-
: ſaid Seſſions, or to adjourn the ſame to ſuch days and CES.
ces as ſhall be for the better adminiſtration of juſtice, and
oft eaſe to the people.

4, ANY one Juſtice ſhall have power, upon complaint of Binding
y perſon, being threatened, and fearing to be wronged, to over to the
nd the party complained upon under ſuch a pecunial ſum peace.
keep the peace as he ſhall think fitting; as alſo, to com-
it ſuch perſon to ſafe cuſtody until ſurety be found by him,
e ſaid complainer always giving his oath before the Juſtice
at he hath juſt cauſe to dread his harm; and albeit no
erſon complain, yet if the Juſtice be credibly informed of
ppearance of trouble betwixt any parties, he ſhall bind
em to the peace in manner aforeſaid, except the parties de-
are upon their conſciences that neither of them doth bear
y grudge to the other. And all ſuch bonds or recog-
ſances ſhall be kept in record by him, and he ſhall make
elivery of the ſame to the Clerk of the peace at the next
eſſions, to be kept and regiſtered by him.

5, IF any perſon being charged to make his appearance Refuſing to
efore a Juſtice or Juſtices of peace, and ſhall refuſe or de- appear be-
y without juſt cauſe, then the Juſtice or Juſtices, whoſe fore juſtices
ommand ſhall be contemned, ſhall hereby have power to of the
mmand the next Conſtable, or in abſence of a Conſtable, peace.
s or their own ſervant, or any other perſon having a war-
nt in writ ſubſcribed by the ſaid Juſtice or Juſtices of
ace, with aſſiſtance of the Country, to bring any ſuch per-
n before him or them.

6, If any Sheriff or Bailiff authoriſed in that behalf, ſhall Neglect of
ndemn any perſon for a Battery wherein blood is drawn, magiſtrates
ually called blood weight, or otherwiſe convict him in any to puniſh
n proper for him to impoſe, the Juſtice ſhall have no delinquents
ver of new to fine that offender for that offence, but if
y ſhall finde him not condignly puniſhed in regard of the
nce committed by him, they ſhall then inform his High-

1655, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

nes Council thereof, that they may take order therein; and if there be not ſatisfaction made by the Sheriff or Bailiff authoriſed as aforeſaid to the party offended, the Juſtices at the Seſſions may modifie and order reaſonable ſatisfaction to the party offended, he purſuing therefore before them: And if they ſhall find the ſatisfaction ordered by the Sheriff or Bailiff in favour of the ſaid party offended, not condign or anſwerable to the offence and wrong ſuſtained, Then they ſhall alſo inform his Highnes Councill thereof, that they may take order therewith as appertaineth.

Magiſtrates ſuffering the guilty to eſcape.

7, If any Sheriff or his Deputy, or Deputies, by colluſions with the delinquent, ſhall ſuffer any perſon guilty to be quitted or cleared by Jury or Aſſize, the party once cleared is not to be brought further in queſtion before the Juſtices, but upon their information the Sheriff, his Deputy, or Deputies, reſpectively are to be called, cenſured, and ſeverely puniſhed by his Highnes Council.

Juriſdiction in riots, &c.

8, The ſaid Juſtices ſhall hereby have power to proceed upon all perſons committing riots, and breaking his Highnes peace, and to puniſh and fine according to the quality of the crime and the Eſtate of the offender; and if any of the ſaid perſons being charged to appear before the ſaid Juſtices ſhall diſobey, the ſummons being endorſed, the lawful ſcitation verified, and fact proved, The Juſtice ſhall puniſh and fine the not appearing according to the quality of the crime, and the eſtate of the offender; and for the more clear determination of the order, which ſhall be kept by the ſaid Juſtices, in the deducing of any ſuch proceſſe, It is declared that it ſhall be lawful to the ſaid Juſtices, whenſoever they have occaſion to move any actions againſt parties for committing any like fact or Ryot, to refer the firſt Summons to the parties oaths of verity, in caſe of want of other lawful probation, who being perſonally ſummoned by the firſt Citation ſhall be holden as confeſſed, and decree to be pronounced againſt him conform to the Lybel and Summons; and if he be not perſonally ſummoned by the firſt citation, the ſaid Juſtices are to ſummon him again by a ſecond ſummons at his dwelling place, which two ſcitations ſhall be as ſufficient to infer Decreet and ſentence upon the Lybel againſt him as if he were apprehended perſonally; and which ſentence given after the manner and form of ap-

Reference to oath.

Citation.

2d citation, when neceſſary.

robation above written is declared to be good and lawful in itſelf. 1655, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

9, THE ſaid Commiſſioners of the peace ſhall put the wes and acts of Parliament to due and full Execution ainſt wilfull beggers, and vagabonds, and noblemen and omen without calling or trade, lurking in ale houſes, tied no certain ſervice, reputed and holden as vagabonds, and ainſt thoſe perſons who are commonly called Egyptians, Beggars. d they ſhall puniſh and fine their receptors, and ſetters of uſes to them accordingly, by ſuch competent pains as is oper to them to injoin.

10, THE ſaid Commiſſioners and Juſtices of peace are reby authoriſed, with power to give order as they ſhall ink moſt convenient, and with leaſt charge to the ſubjects, r mending all Bridges, High ways, and Paſſages, to or from y market Town or Sea Port within their reſpective Shires, z. by laying a penalty upon the County, Pariſhes, or Perns reſpectively liable, according to the eſtimate they ſhall e informed the Charges of the Bridges and High ways ill amount unto; which penalty they are to levy and diſoſe of for the repairing of the ſaid Bridges and High ayes; And ſhall alſo call before them all ſuch perſons as all ſtraighten thoſe High wayes and Paſſages, or otherwiſe, y caſting of ditches, or any other trenches through the me, ſhall make thoſe high ways noiſome and troubleſome nto paſſengers, and ſhall puniſh them, and fine them acording to the quality of their offence; And to the effect : may be known of what breadth all Common High Wayes hould be to market Towns, it is declared that the ſame hould be of 20 foot of meaſure in breadth at the leaſt; and here any are of larger breadth, it is ordained the ſame ſo o remain unaltered or ſtraightened; and that the ſaid Juſices cauſe the ſame to be maintained with all other wayes rom any town in the pariſh to the pariſh Churches in the me breadth as they are; and where they find any neceſſi- of other ways from any town in the pariſh to pariſh hurches, they ſhall inform his Highneſſe Council thereof, ho ſhall give them, after ſufficient information, their diction therein, according wherein unto they ſhall be holden proceed; and if any county, pariſh, or perſon, to whom belongs as aforeſaid, ſhall refuſe or neglect to concur for Juriſdiction touching highways and ferries. Breadth of highways.

1655. CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

mending of Bridges, Highways, and Paſſages, the ſaid Juſtices ſhall have power to cenſure and puniſh them according to their diſcretion, due regard being had to the quality and nature of the offence; alſo, they are to take care that ſufficient Ferry Boats and Bridges for Horſes within the ſame where Horſes ought to be ferried, be provided and kept in repair by the Ferrier, upon the penalty by the acts of Parliament, in that caſe provided, upon the Ferrier who ſhall neglect to do the ſame.

Cutters and deſtroyers of planting, breakers of dovecots, &c.

11, THE ſaid Commiſſioners for the peace ſhall put the acts of Parliament to execution againſt cutters and deſtroyers of planting, green wood, orchards, yards, hedgings, breakers of dove houſes, killers of deers, and treſpaſſers in parks, and connigers, ſtealers of bees, and bee hives, uſers of unlawful games, with ſetting dogs, ſlayers of red and black fiſh, and ſmolts, in forbidden time, fowlers fowling in other mens lands, makers of moorburn and moſburn, ſetters of crewes, or nets in waters and games, having and keeping of crewes and tares in for bidden time, and ſhall proceed againſt them accordingly. And for their better proceedings, it is declared, the ſaid Juſtices of Peace may try and puniſh the violators of the ſaid acts; in the trial whereof they ſhall proceed by witneſſes, by oath of party, and puniſhment to be inflicted by them according to the circumſtances of the offence, and the quality of the offender, by a pecunial ſum or corporal puniſhment, and no other; with the proviſion, that the ſaid Commiſſioners of the peace ſhall not extend this power to any perſons who ſhall be arreſted and convened for the ſaid crimes before any other ordinar judge; tis alſo provided that the power contained in this article ſhall no ways be prejudicial to any commiſſions or rights granted to others, and now in force, whereby they have power to proceed and cenſure the crimes and offences above written.

Mode of trial.

Puniſhment.

Foreſtallers and regraters.

12, The ſaid Commiſſioners of the peace ſhall put in execution the acts of Parliament for puniſhing all foreſtallers and regraters of markets.

Innkeepers receiving vagabonds.

13, No in keeper or hoaſtler ſhall receive any maſterleſs men, vagabonds, or other perſon or perſons guilty of know crimes, or uſing ſtealth and robbery, under the pains under written, to wit, 40s. to be incurred by them for the firſt fault, 4l. for the ſecond, and 10 merks for the third, Scots money; together with the loſing of the liberty of brewing

and ſelling drink, the incurrers of which pains ſhall be puniſhed, according to the order aforeſaid, by the ſaid Juſtices, who ſhall have power to purſue and fine the delinquents in their courts or ſeſſions, according to the pains aforeſaid, and to levy or uplift the ſaid pains and fines from them without prejudice of all actions criminal or civil, competent of the law againſt the ſaid in keepers or hoaſtlers in caſe they be in the danger thereof, which ſhall not be taken away by any puniſhment ſet down and to be inflicted conform to this inſtruction. 1665, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

14, The ſaid Commiſſioners of the peace ſhall put in execution the lawes concerning maltmakers againſt all breakers and contraveners of the ſaid lawes. Maltmakers.

15, THEY ſhall ſet down order in the countrey for governance in time of plague, and ſhall puniſh ſeverely the diſobeyers of the order appointed by them according to the quality of the offence. Regulations to be obſerved in the time of the plague.

16, THEY ſhall appoint at their quarter-ſeſſions, to be kept in February and Auguſt, the ordinary hire and wages of labourers, workmen, and ſervants; and who ſhall refuſe to ſerve upon the price ſet down by them, ſhall be impriſoned, and further puniſhed at their diſcretion: and to the effect that ſervants may be more willing to obey the ordinances to be made by the ſaid Juſtices, and the ſaid fees or wages, the ſaid Juſtices ſhall have power to dicern and compell the maſters to make payment of the fees or wages appointed by their ordinance, in caſe the ſervants pleaſe rather to purſue for the ſame before them then any other judge. Juriſdiction touching ſervants.

17, THE ſaid Commiſſioners of the peace ſhall take notice, that in all ſheriffdoms where there are any gaoles and priſon houſes within any burgh, that the ſame may not be ſuffered to decay or become ruinous, but be kept up at the charge of the ſhire where the reſpective burgh is not chargeable by land therewith. And if there be any ſhire where there is not any gaol or priſon houſe, they ſhall inform his Highneſſe Council thereof, that they may appoint and give order for building of one in ſome convenient place; and according to the directions to be given thereupon, the Juſtices ſhall be holden to proceed. Priſons not to become ruinous. Priſons to be in every ſhire and borough.

18, AND becauſe there may be a great many of priſoners apprehended and committed, who having no means of their own for their maintenance and entertainment, will other- For aliment of poor priſoners.

1655. CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

wiſe famiſh and ſtarve before they can come to their trials; who nevertheleſs, in regard of the crimes they have committed, can no ways be put under ſurety or otherwiſe, in faults of leſs conſequence, are unable to find ſufficient caution to be made forthcoming and anſwerable at the next ſeſſions; therefore, it ſhall be lawful to the ſaid Commiſſioners and Juſtices, at their quarter-ſeſſions, to rate every pariſh for a weekly proportion for the entertainment of thoſe poor priſoners, provided that they do not exceed the ſum of five ſhillings, Scots money, at the moſt, nor under one ſhilling at the leaſt; which ſum ſhall be raiſed and uplifted for that uſe by the miniſter or reader, who ſhall ſerve at every pariſh, from ſuch deacons who ſhall be appointed to collect the ſame; and the ſaid ſums to be delivered by the conſtable of the pariſh at the quarter-ſeſſions in preſence of the whole Bench then convened, to ſuch perſons as the ſaid Juſtices ſhall truſt therewith, and who accordingly ſhall make due account in paying the gaolers ſuch rates as ſhall be allowed for the poor priſoners, and making the reſt forthcoming for ſuch uſe and intent of the like nature as the ſaid juſtices ſhall appoint.

Duty of magiſtrates to receive delinquents into their priſons.

19, ALL Magiſtrates of burghs, and keepers of any gaols and priſons, ſhall receive into their priſons all ſuch perſons as ſhall be brought by the conſtables, or any other perſons having warrant under the hand of any one Juſtice of the peace, (the ſaid Juſtices cauſing ſatisfaction to be made for their entertainments.) And if any Magiſtrates, or their gaolers, ſuffer any perſons, committed by the Juſtices to their priſons, to eſcape, they ſhall be condignly puniſhed therefore at the diſcretion of his Highneſſe Council.

Craftſmens work.

20, THE ſaid Commiſſioners are to ſet a price upon craftſmens work, and upon the ordinary of peny bridals, together with the price of ſhearers fees, and to puniſh the contraveners as appertaineth.

Beer and ale.

21, THE ſaid Juſtices ſhall take care that good and wholſom beer and ale be brewed in every ſhire, and ſhall appoint viſitors to that effect.

Puniſhment of curſing and ſwearing.

22, THE ſaid Juſtices ſhall put in execution all acts of Parliament made for puniſhing all perſons whomſoever, who ſhall curſe or profainly ſwear, or ſhall be mockers and reproachers of diety, or the exerciſe thereof, and ſhall require and levy upon every offender the ſeveral penalties following,

viz. of a nobleman, 20 pounds; each baron, 20 merks; each gentleman, heretor, or burgeſſe, 10 merks; each yeoman, 40 ſhillings; each ſervant, 20 ſhillings, Scots money; each miniſter the fifth part of their year's ſtipend, without prejudice to other proceedings againſt any ſuch miniſter for the ſame. And in any of all the caſes before ſpecified in this inſtruction, the ſaid Juſtices ſhall then put in execution all ſuch laws as, for corporal puniſhments, have any proviſion mentioned in them for ſuch caſes. And in caſe of the inabilities of the parties delinquents to pay the fore-mentioned penalties in any of all the caſes before mentioned in this inſtruction, the ſaid Juſtices ſhall put in execution (as for corporal puniſhments) ſuch acts of Parliament as are made and provided in that behalf: and that the wives delinquents as aforeſaid, ſhall be puniſhed according to the quality of their reſpective huſbands; and that their huſbands be liable for payment of their wives fines reſpectively in manner above mentioned, *toties quoties*, for each fault: and all others whatever, not particularly herein enumerated, are to pay in proportion to their reſpective qualities and degrees. And alſo the ſaid Juſtices are to put in execution the acts of Parliament made for the puniſhing of all perſons that ſhall be found guilty of the ſin of fornication, and ſhall levy, or cauſe to be levied, the ſeveral pecunial ſums therein mentioned, viz. for each nobleman, for the firſt fault, 400 pounds; each baron and landed gentleman, 200 pounds; each other gentleman and burgeſs, 100 pounds; each farmer, 25 pounds; every other perſon of inferior quality, 10 pounds, Scots money; and that theſe penalties ſhall be doubled, *toties quoties*, according to the relapſes of the degrees of the offence, and quality of offenders; and that the ſaid penalties ſhall be levied, not only of the man, but alſo of the woman, according to her quality, and the degree of her offence, the one without prejudice of the other: all and ſundry which penalties ſo to be levied are to be diſpoſed of as followeth, to wit, one half to pious uſes in the ſame pariſh where the offender lives, or the offence hath been committed; and the other half to be divided into two equal parts, one part whereof to be given to the informer and proſecutor, and (out of the other half) to ſatisfy the conſtable or other perſon who ſhall be employed for bringing the party accuſed to juſtice; and the remainder to be diſpoſed of to

1655. CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

In caſe of inability to pay the fines.

Puniſhment of wives committing the ſaid offences.

Of fornication.

Penalties, how diſpoſed of.

1665, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

pious uſes, or towards ſatisfying of the conſtables for their travels and ſervices in other parts of their office, according as the Juſtices ſhall think fit. That the ſaid Juſtices ſhall put the acts of Parliament in execution for the puniſhing of all perſons found guilty of the ſin of drunkenneſſe, or exceſſive drinking, eſpecially under the name of healths; or of haunting taverns or ale-houſes after ten of the clock at night, or at any time of the day, except in time of travel, or for ordinary refreſhments; as alſo againſt the keepers of taverns or ale-houſes that ſhall ſell the drink unto them; which penalties, in the ſaid ſeveral acts contained, the ſaid Juſtices are to levy, or cauſe to be levied, upon the ſaid delinquents; and the ſaid penalties are to be diſpoſed of by the ſaid Juſtices in like manner as aforeſaid.

Drunkenneſs.

Prophaning the Lord's day.

23, THE ſaid Juſtices ſhall put in execution all acts of Parliament made againſt ſuch perſons as ſhall prophane the Lord's day, and require or levy the penalties therein contained; which penalties ſo raiſed the ſaid Juſtices are to diſpoſe of in like manner as aforeſaid.

Intermediate ſeſſion.

24, ANY two or more Juſtices of peace ſhall be a ſufficient number to decide in matters occurring betwixt the four quarter-ſeſſions in their reſpective ſhires.

Payment of fines.

25, THE ſaid Juſtices of peace, as well to burgh as land, ſhall convene, and be preſent at the quarter-ſeſſions of the ſhire where the burgh and land lies, make their record, and make payment of the fines intromitted with by them as Juſtices of peace of that ſhire to their collector.

Collector of fines.

26, THE ſaid Juſtices are empowered to appoint a ſufficient collector for levying the fines and penalties which they have power to impoſe upon any offender, and are to take caution or ſecurity of him for making due accompt.

Allowance to juſtices for their attendance.

27, THE ſaid Juſtices ſhall have, during the time of quarter-ſeſſions, for every day of their abode, (ſo it do not exceed the number of three dayes at the moſt at one time) allowed for every one of them fourty ſhillings, Scots money, daily, to be paid and upliſted by the collectors of the fines; and all ſuch Juſtices as take the benefit of that allowance, and ſhall be abſent from any quarter-ſeſſions in their reſpective diviſion, ſhall incur the penalties of 40 pounds, Scots money, not having a lawful excuſe, allowed of as ſuch by the reſt of the Juſtices there aſſembled.

Fines for non-attendance.

Horning for fines.

28, THE commiſſioners for adminiſtration of juſtice to the people in Scotland, ſhall direct general and ſummary charges

f horning and poinding at the inſtance of the collector, ppointed in every county for ingathering of all fines and nalties whatſoever incurred) upon ſimple charges of 15 ys; and no ſuſpenſion ſhall be granted, but upon conſig- tion of the ſums contained in the ſentence, and by find- caution for payment of the charges, at the modification the ſaid commiſſioners. 1655, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

29, AND at what time, and whenſoever any perſon ſhall uſe any perſon or perſons to be guilty of treaſon, murder, other felony, blaſphemy, inceſt, or any other heinous ne, in ſuch caſe the ſaid Juſtice or Juſtices ſhall forth- h cauſe ſuch perſon or perſons to be apprehended, and, r inquiry made into the caſe, the ſaid Juſtice or Juſtices, they find cauſe, ſhall commit the offender to priſon, or e ſufficient bail, if the caſe by law be bailable; and ſhall e the information of the party accuſing, upon oath, and d him to proſecute; and ſhall take the teſtimony or de- ſitions of the witneſſes, likewiſe upon oath, and binde m to give in evidence; and ſhall alſo take the examina- n of the party accuſed: all which recogniſances, inform- ens, depoſitions, and examinations, the ſaid Juſtice or Juſ- es ſhall certify to the next Quarter-Seſſions, Aſſizes, or Cri- nal Courts, for gaol delivery reſpectively, to the end the ſtice may proceed againſt them according to the law. In the caſe of heinous offences.

30, AND foraſmuch there have been divers acts of Par- ment made for maintaining of the poor in every pariſh, it declared that the ſaid Juſtices ſhall take care to put the l acts in execution, viz. they ſhall appoint two or more ſons of good fame and quality in every pariſh to land- d to be overſeers for the poor in each pariſh aforeſaid; to authoriſe the ſaid overſeers to take due trial and ex- nation of the condition and number of ſuch poor, aged, , lame, and impotent, inhabitants of the ſaid pariſh, who themſelves) have not to maintain them, nor are able to rk for their living; as alſo, of all orphans and other poor ldren within the ſaid pariſh, who are left deſtitute of all p; and the ſaid overſeers are to liſt and inrol all ſuch ſons, and to provide them ſuch convenient houſe for ir dwelling, either apart or together, as they ſhall judge quiſit; and upon conſideration had what their neceſſary aintenance will extend to weekly, the ſaid overſeers are to ll for the collections of the ſaid pariſh, or other ſums ap- Maintenance of the poor. Overſeers appointed. Who are the poor.

1655, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

pointed for the maintenance of the poor thereof; and the perſons who have the ſaid ſums in their hands are hereby required to deliver the ſame to the ſaid overſeers, and their receipts, under their hands, ſhall be their ſufficient diſcharge; which ſums ſo received the overſeers are to diſtribute proportionably to the ſeveral poor people aforeſaid, according as they ſhall find their neceſſities to require; and where the collections and other monies aforeſaid are found deficient for the maintenance of the ſaid poor, the ſaid Juſtices are hereby empowered to give order to the ſaid pariſh to lay a tax or ſtint upon the whole pariſhioners or inhabitants, according to the eſtimation of their eſtates and conditions, for ſuch a weekly or monthly contribution as ſhall be found neceſſary towards the maintenance of the ſaid poor, and putting the ſaid orphans to ſchools or callings, as they ſhall think them fitteſt for, and to take care that it be effectually done: and the ſaid overſeers are to demand and receive from all and every perſon of the ſaid pariſh, according to the ſaid ſtint or tax; and in caſe any perſon or perſons ſhall refuſe to make payment of the ſaid proportions, upon repreſenting thereof to the ſaid Juſtices, they ſhall give order for diſtraining and poinding of their goods for payment thereof. And the ſaid overſeers are to take due trial of the good behaviour and carriage of the poor perſons liſted and inrolled as aforeſaid; that if any of them being ſo provided for, do go abroad to beg, or otherwiſe miſcarry themſelves, or ſhall refuſe, being able to work any manner of work that they are able to perform, in ſuch caſes the ſaid overſeers are to acquaint the ſaid Juſtices therewith, who ſhall appoint ſuch puniſhments for the firſt fault as in their judgments they ſhall find requiſite; and if they ſhall continue in ſuch miſcarriages, they are to be held and reputed as vagabonds, and ſo to be proceeded againſt according to the law in that caſe provided. And to the end that there may be a due and exact performance of the premiſſes, the ſaid Juſtices are hereby required to call before them the ſaid overſeers once in every ſix months, or oftner, if they ſhall think it expedient, to give an account, upon oath, of the whole ſums received by them, and to produce the roll of the ſaid poor, together with the ſtint-roll, and an account of what monies they have received any otherways for the uſe of the ſaid poor; and after a due conſideration of the charge, together

Parochial aſſeſſment,

inforced by diſtraining and poinding.

Begging puniſhed.

An account taken from the overſeers every ſix months.

ſcharge thereof, to approve, allow, or diſallow, 1655.
s ſhall be found juſt. And the ſaid Juſtices are CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.
trial and examination how the ſaid overſeers have
their truſt; and in caſe of the refuſal of any of
verſeers nominated and elected, as aforeſaid, to
ſaid office, or having accepted, ſhall be found ne-
rein, or ſhall refuſe or delay to give an account of
niſſions when required as aforeſaid, or to deliver
s ſhall be found reſting in their hands, undiſpoſ-
e end of the year, unto ſuch new overſeers as
ppointed; in ſuch caſes the offenders ſhall incur
of twenty pounds Scots to the uſe of the poor, Penalty on overſeers.
r ſuch further cenſure as the ſaid Juſtices at their
ions, upon conſideration had of their fault, ſhall
impoſe.

Warrants, Recognizances, and Mittimuſſes, to be iſ-
Juſtices of the Peace in their reſpective Counties, as
ective Caſes ſhall require.

IL WARRANT FOR FELONIES, OR OTHER MISDEMEANOURS.

re in the name of his highneſs the Lord Protec-
commonwealth of England, Scotland, and Ire-
harge and command you to give ſummons, or to
e me, or ſome other of his Highneſs Juſtices of
of to anſwer ſuch
are already complained of, and ſhall be then fur-
ed againſt him concerning
he come provided with ſufficient ſureties, to be
the cauſe ſhall require: hereof fail not. Given
and the day of

ſtables of
ither of them, or to
uty or deputies.

WARRANT FOR THE PEACE, AND GOOD BEHAVIOUR.

1655, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

Mid-Lothian.

WHEREAS A of hath taken his corporal oath before me, that B hath threatened to burn his houſe, beat himſelf, his wife, or children, whereupon he is afraid of bodily harm to be done to him, his wife, or children, by the ſaid B, or by his procurement: theſe are therefore in the name of his Highneſſe the Lord Protector of the commonwealth of England, Scotland, and Ireland, to charge and command you, to bring the ſaid B before me, or ſome other of his Highneſſe Juſtices of peace of this county, provided with ſufficient ſureties, to be bound with him for his appearing at the next quarter-ſeſſions to be held for this county or diviſion, then and there to anſwer the premiſſes; and that in the mean time he ſhall keep his ſaid Highneſſe peace towards his Highneſſe and all the people of this nation, and more eſpecially towards which if he ſhall refuſe to do, that then you carry him the ſaid B to his Highneſſe gaol at the burgh of there to remain till he ſhall do the ſame, or be delivered by due courſe of law.

GIVEN under my hand and ſeal, the day of

The like warrant for good behaviour, as the cauſe ſhall require.

RECOGNIZANCE FOR SURETIES.

Mid-Lothian.

A B of in the county of yeoman, came before me one of his Highnes Juſtices of peace in the ſaid county, the day of in the year of , and then did acknowledge to owe unto his Highnes the Lord Protector of the commonwealth of England, Scotland, and Ireland, the ſum of pounds ſterling, to be levied upon his eſtate real and perſonall to his Highnes uſe. And likewiſe C D of

1665. CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

d E F of did each of them acknowledge owe unto his ſaid Highnes the ſeveral ſums of unds ſterling a-piece, to be levied upon their reſpective ates, both real and perſonal, to his Highnes uſe; upon ndition, nevertheleſs, that if A B ſhall perſonally appear fore his Highneſs Juſtices of peace at the next quarter-ſions, and then anſwer ſuch matters as ſhall be objected ainſt them by concerning

And in the mean time keep his Highnes peace to-rds his Highnes, and all his and more ecially towards and not depart the urt without licence; then the above ſaid recognizance to void.

aken and acknowledged be-fore the day of in the year of

A B of in the county of oman, came before me, one of his Highneſs Juſtices of ace in the ſaid county, the day of the year of and then did acknowledge to owe to his Highneſs the Lord Protector of the commonwealth England, Scotland, and Ireland, the ſum of unds ſterling, to be levied upon his eſtate real and per-nal to his Highneſs uſe.

UPON condition, that if the ſaid A B ſhall appear before s Highnes Juſtices of peace, to be held for this county or viſion at the next quarter-ſeſſions, and then proſecute his ighneſs evidence againſt concerning at then this recognizance to be void.

UPON condition, that if A B of do perſon-ly appear before his Highnes Juſtices of peace at the next arter-ſeſſions to be held for this county or diviſion, and en teſtifie his knowledge concerning certain miſdemanors ereof ſtands charged, or is ſuſpected, d not depart the court without licence; then this recog-ance to be void.

aken and acknowledged be-fore the day of in the year of

1655. CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

I SEND you herewithall the body of brought before me this day, and charged with a felonious taking and carrying away cloth and being the goods of with aſſault of and taking from his perſon goods or money, or with the wilful murder of or the mortal wounding or with any other felony, to be expreſt, or the ſuſpicion of it; him therefore receive into his Highneſe gaol and priſon in the burgh of and there him ſafely keep, until he ſhall be thence delivered by due courſe of law; hereof fail not, &c.

GIVEN under my hand and ſeal the day of

To the keeper of his Highneſs gaol at the burgh of

PART II.

Mid-Lothian.

AND it being found neceſſary for the due execution of the office of Juſtices of the peace that conſtables ſhould be appointed in every pariſh throughout this nation, it is declared that any two Juſtices of peace, in each reſpective diviſion in the ſeveral counties and ſhires, are empowered, aſſoon as conveniently they may, to nominate and appoint two or more fit perſons in every pariſh, according as they ſhall find needful, to be conſtables, and give them their oath, for the obſerving and putting in execution the inſtructions following.

Appointment of conſtables.

LIKEWISE in great towns, not being cities nor free burghs, the ſaid Juſtices are to appoint a number of conſtables proportionably to the greatneſs thereof; all which conſtables are to be nominated and elected once every year, or oftner, if the ſaid Juſtices ſhall find occaſion. And the Magiſtrates of all cities and free burghs are to elect ſo many fit perſons to be conſtables in the ſaid cities and burghs as they ſhall find needful, having conſideration of the quality thereof, and to give them their oath for putting in execution the ſaid

nſtructions; which conſtables ſo to be elected are to be hanged every year. And if any of the conſtables nominated and elected aforeſaid ſhall refuſe to accept the ſaid harge, and take his oath for dutiful execution thereof, ſhall e impriſoned and fined at the diſcretion of the Juſtices of eace at their next meeting. 1655, CROMWELL'S INSTRUCTIONS CONCERNING JUSTICES.

THE conſtables ſhall take the oath following. Oath.

YOU ſhall ſwear that you ſhall faithfully and truly diſcharge your office of conſtable within the pariſh of

INSTRUCTIONS FOR CONSTABLES.

1, ALL the conſtables, or at leaſt one of every pariſh, inſtructed with power to anſwer for the reſt within the ſaid pariſh, ſhall attend at every quarter-ſeſſion, there to give information of all ſuch breaches of the peace, and other miſemanours, as have hapned within their bounds from the receding ſeſſions, and hath come to their knowledge, and all no way hide, cover, nor conceal the ſame, nor any of e proofs and evidences which they can give for the clearg and proving thereof; and otherwiſe to give the bench rther ſatisfaction in any thing wherein they ſhall be reaired; and to receive from the ſaid Juſtices, at the end of e ſeſſion, ſuch orders and directions as they ſhall then enyn and appoint. CONCERNING CONSTABLES. Muſt attend the quarter-ſeſſions.

2, EVERY conſtable in their reſpective pariſhes ſhall aprehend any ſuſpicious perſons who are night-walkers, and nnot give a good account of themſelves, and carry them the next Juſtices of peace to find ſurety for his good beaviour, or otherwiſe to be committed to priſon. And the id conſtable or conſtables ſhall ſtay and arreſt all vagaonds, ſturdy beggars, and egyptians, and carry them before me Juſtice of peace, who ſhall take order for their comitting to priſon, or other puniſhment, according to the tatutes of Perliament. Apprehenſion of ſuſpicious perſons.

3, EVERY conſtable in their reſpective pariſhes ſhall arreſt all idle perſons whom they know to have no means to ive upon, and will not betake themſelves to any labour, rade, or occupation, and ſhall carry them before ſome Juſice of peace, who, after examination, ſhall either commit Arreſtment of idle perſons.

1655, CROMWELL'S INSTRUCTIONS CONCERNING CONSTABLES.

them to priſon, or take ſurety of them for their appearance at the next quarter-ſeſſions.

4, ALL conſtables in their reſpective pariſhes ſhall apprehend every perſon or perſons that ſhall be guilty and culpable of ſlaughter, murder, theft, or any other capital crime whatſoever; and ſhall require his neighbours to aſſiſt for ſafe conveying of ſuch perſon or perſons to the next Juſtice of peace, who ſhall commit him or them, or take ſurety, according to the inſtructions given to the Juſtices of peace in ſuch like caſes.

Perſons guilty of ſlaughters, &c.

5, IF any perſon or perſons ſhall refuſe or delay to aſſiſt the ſaid conſtable or conſtables in executing his or their offices, ſuch perſons ſo refuſing or delaying, ſhall be impriſoned, or otherways puniſhed, by the ſaid Juſtices at their ſeſſions.

Obligation on every perſon to aſſiſt the conſtable.

6, A CONSTABLE ſhall arreſt any perſon, not being in his Highneſs ſervice, who ſhall be found wearing naugbuts, or guns, or piſtols, of any ſort, and ſhall carry them before ſome Juſtice of peace, who is either to take ſurety for their appearance the next quarter-ſeſſion, or commit them priſoners till they do the ſame, unleſs they be licenced from the Councill or the Commander in chief, or ſome impowered from them, or him, to give ſuch licences.

Perſons wearing arms.

7, UPON the appearance of any fray or ſtir between parties, the conſtable ſhall require the aſſiſtanee of his neighbours for ſundering of the parties; and if there be any harm done to the conſtable, or any of the aſſiſtants, by them who made the affray, they ſhall be puniſhed by the Juſtices at the next ſeſſion.

Duty of conſtables on the appearance of a fray.

8, WHEN any perſon or perſons have made an affray, and then flee to an houſe, the conſtable or conſtables may follow to the houſe; and if the doors be ſhut, he ſhall require the maſter, or the then keeper of the houſe, to open the doors, which if he or ſhe ſhall refuſe, he ſhall take notice of the ſaid maſter or keeper of the houſe, and require witneſs thereon; and albeit the delinquent ſhall flee further without the bounds of the conſtables charge, yet may the conſtable follow and apprehend him in a freſh purſuit, and require concurrence of the country to that effect.

When an affray has actually taken place.

9, THE conſtables in every pariſh ſhall execute all ſuch precepts and warrants as they ſhall from time to time receive from the Juſtices of the peace.

Execution of the juſtice of peace warrants.

), AND that the ſaid conſtables may have reaſonable ſa- 1655, CROM-
ction for their travels, it is declared that the Juſtices WELL'S IN-
allow unto them out of the fines aforeſaid, as in their STRUC-
etion they ſhall think their labour and diligence doth de- TIONS
, not exceeding twelve pence *per diem* for each day they CONCERN-
attend the ſeſſions, or be employed in carrying delin- ING CON-
ıts to priſon. STABLES.

Payment of conſtables.

No. IX.

CHARLES II, Parl. 1ſt, 1661, *c.* 38.

PART I.

COMMISSION AND INSTRUCTIONS TO THE JUSTICES OF PEACE AND CONSTABLES.

I.—OUR Soveraign Lord, taking to His Royal conſi- CHAS. II,
ation, how much the appointing of Juſtices of Peace and 1661, C. 38,
ıſtables within all the Shires of this Kingdom, under the GENERAL
gn of his *Majeſties* Royal Predeceſſors, did contribut to ACT—JUS-
Peace, Quiet and good Government thereof, and to the TICES.
dy and impartial execution of Law and Juſtice to all
ons ſubjected to their juriſdiction and power. There-
and for the furtherance of theſe ends in the future, His
eſty, with advice and conſent of His Eſtates of Parlia-
t, Doth hereby Statute and Ordain, that in all time com-
there ſhall be Juſtices of His *Majeſties* Peace appointed
in each ſeveral Shire of this Kingdom, to be nominat,
ı time to time, by His *Majeſtie* and His Royal Succeſ-
: which Juſtices of Peace are hereby impowered to ad-
iſtrat Juſtice, and put His *Majeſties* Laws in execution,
ording to the particular inſtructions after mentioned, viz.

II.—THE Juſtices of Peace at their firſt ſitting, ſhall
: the Oath of Allegiance, and Oath *De fideli Adminiſtra-*
: which at firſt ſhall be adminiſtrat to them by the She-
or his Depute of ilk reſpective Shire, or in their abſence,
he Preſident and Conveener for the time.

OLLOWETH the Oath of Allegiance.

CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

Oath of allegiance;

I FOR teſtification of my faithfull Obedience to my moſt gracious and redoubted Soveraign, CHARLES, *King of Great Britain,* France, *and* Ireland, *Defender of the Faith,* &c. *Affirm, teſtifie, and declare, by this my ſolemn Oath, that I acknowledge my ſaid Soveraign, only Supreme Governour of this Kingdom, over all perſons, and in all Cauſes, and that no Forraign Prince, Power or State, nor Perſon, Civil or Eccleſiaſtic, hath any Juriſdiction, Power or Superiority over the ſame: And therefore I do utterly renounce and forſake all Forraign Juriſdictions, Powers and Authorities; and ſhall at my outmoſt power, defend, aſſiſt and maintain His* Majeſties *Juriſdiction foreſaid againſt all deadly, and ſhall never decline His* Majeſties *Power nor Juriſdiction, As I ſhall anſwer to GOD.*

FOLLOWETH the Oath *De fideli adminiſtratione.*

of office.

I AS one of the Commiſſioners and Juſtices of Peace, within Shires, according to my knowledge, wit and Power, ſhall do equal Right both to rich and poor, conform to the Laws, Statutes and Cuſtoms of the Land: and that I ſhall not be of Counſel with any perſon in any quarrel or matter depending before me; and that I ſhall every Quarter keep the Seſſions, or oftner, as I ſhall be required, not having any juſt impediment in the contrair, and ſhall faithfully and truly diſcharge my duty as a Juſtice of His Majeſties *Peace, and ſhall leave nothing undone that may tend to the Preſervation of the ſame: So help me GOD.*

§ III.—The Juſtices of Peace, in each reſpective Shire, ſhall meet and conveen together, four times in the year: viz. On the firſt Tueſday of *May*, the firſt Tueſday of *Auguſt*, the laſt Tueſday of *October*, and the firſt Tueſday of *March*. In which Seſſions, they ſhall adminiſtrat Juſtice to the people in things that are within their Juriſdiction; and puniſh the guilty, for Faults and Crimes done and Committed in the preceding Quarter: and by mutual and conjunct advice, make and rectifie Ordinances for the Fees of Servants, Shearers in Harveſt and other Labouring men, appoint Prices for all handy-crafts, elect or continue Conſtables or other Officers, and diſpoſe of the Fines and Mulcts for payment of the Conſtables, Clerks, and other Officers Fees, and imploy the remanent on ſuch neceſſary and pious uſes, as they ſhall find moſt expedient; and ſhall have power to continue the ſaids Seſſions, or to adjourn the ſame to ſuch days and places as ſhall be moſt convenient.

Times of meeting of the quarter-ſeſſions.

Buſineſs done at them.

CHAS. II. 1661, c. 38, GENERAL ACT—JUSTICES.

§ IV.—ANY one Juſtice ſhall have power, upon complaint of any perſon, being threatned, and fearing to be wronged, to bind the party complained upon, under ſuch a pecunial ſum to keep the Peace, as he ſhall think fitting; As alſo, to commit him until ſurety be found by him, the ſaid Complainer always giving his Oath before the Juſtice, that he hath juſt cauſe to dread him harm; and albeit no perſon complain, yet if the Juſtice be credibly informed of appearance of trouble betwixt any parties, he ſhall bind them to the peace in manner foreſaid, except the parties declare upon their conſciences, that neither of them bear any grudge to other. And all ſuch bonds ſhall be kept and recorded by him, and he ſhall make delivery of the ſame to the Clerk of the Peace at the next Seſſions, to be kept and regiſtrat by him.

Binding to the peace.

§ V.—IF any perſon being charged to make his appearance before a Juſtice of Peace, ſhall refuſe or delay without cauſe, if the party be a landed Gentleman, whoſe rents exceed ten chalders of victual, or one thouſand merks of ſilver, then the Juſtice (whoſe command is contemned) ſhall inform the ſame to ſome of His *Majeſties* Privy Council, to the effect, the party of the quality foreſaid may be called and fined for his diſobedience; and if the diſobeyer be of a meaner degree, the Juſtice of Peace ſhall hereby have power to command the next Conſtable, or in abſence of a Conſtable, his own ſervant, or any other perſon having a warrand or writ ſubſcribed by the ſaid Juſtice of peace, with aſſiſtance of the Countrey, to bring any ſuch party before him.

Refuſing to appear before juſtices of the peace.

§ VI.—IF either the Sheriff or Baily ſhall condemn any perſon in Blood-wyt: or otherwayes convict him in any pain proper for him to impoſe, the Juſtice ſhall have no power of new to fine that Offender for that offence; but if they ſhall find him not condignly puniſhed in regard of the offence committed by him, they ſhall then inform His *Majeſties* Council thereof, that they may take order therewith; and if there be not ſatisfaction made by the Sheriff or Baily to the Party offended, the Juſtices may modifie a reaſonable ſatisfaction to the party offended, he purſuing therefore before them: And if they find the ſatisfaction decerned by the Sheriff or Baily, in favours of the ſaid party offended, not condign, nor anſwerable to the offence and wrong ſuſtained, then they ſhall alſo inform his *Majeſties* Council thereof, that they may take order therewith as appertaineth.

Neglect of magiſtrates to puniſh delinquents or to ſatisfy the party offended.

CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

§ VII.—If either Sheriff or Baily, or their Deputes, by colusion, with the Delinquent, shall suffer any person guilty to be quitted or cleared by an Assize, the party once cleared is not to be brought further in question before the Justices, but upon their information the Judges are to be called, censured, and severely punished by His *Majesties* Council.

Jurisdiction in riots, &c.

§ VIII.—The said Justices shall hereby have power to proceed upon all persons committing Riots, and breaking the Kings Peace under the degree of Noblemen, Prelates, Counsellors and Senators of the Colledge of Justice, and to punish and fine according to the quality of the Crime, and the Estate of the offender. And if any of the saids persons, being Charged to compear before the saids Justices, shall disobey, the Summons being indorsed, the lawful Citation verified, and Fact proven, the Justices shall punish and fine the not compearing, according to the quality of the Crime and Estate of the Offender. And for the more clear determination of the order which shal be kept by the saids Commissioners, in the deducing of any such process; Our Soveraign Lord, with advice of His Estates, Declareth, That it shall be lawful to the said Justices, whensoever they have any occasion to move any action against Parties, for committing any like Fact or Riot, to refer the first Summons to the Parties oaths of verity, failzing of other lawfull probation; who being personally summoned by that first Citation, shall be holden as confest, and Decreet to be pronounced against him, conform to the Libell and summons. And if he be not personally summoned by the first Citation, the saids Commissioners shall be holden to cause Summond him of new again, by a second summons at his dwelling place; which two Citations shall be as sufficient to infer Decreet and Sentence upon the Libell against him, as if he were apprehended personally. And which Sentence given after the manner and form of probation above-written, His *Majesty*, with advice foresaid, Authorizes and Sustains as good and lawfull in themselves. And as concerning these persons of higher degree, the saids Commissioners shall use all their power for preventing and staying of the Riots, commanding the attempters in His *Majesties* Name to cease, and to find Caution for keeping of the Peace, and for their compearance before His *Majesties* Council, and if any person being charged to find Caution, and refuse it, or delay to

Reference to oath.

Citation.

2d citation, when necessary.

Persons of higher degree.

do the ſame: and in the mean time contraveeneth the ſaid Charge, by committing of ſome deed betwixt the time of he Charge and finding of the Caution, nevertheleſs he ſhall e anſwerable for the pain, from the date of the Charge, ikeas if Caution had been then found. CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

§ IX.—THE ſaids Commiſſioners ſhall put His *Majeſties* Beggars. ct of Parliament to due and full execution againſt wilfull eggars, and Vagabonds, ſolitary and idle men and wo- en without Calling or Trade, lurking in Ale-houſes, tyed no certain ſervices, repute and holden as Vagabonds; and Vagabonds. ainſt thoſe perſons who are commonly called *Ægyptians*, d they ſhall puniſh and fine their Reſſetters and Setters of uſes to them accordingly, by ſuch competent pains as is oper for them to enjoyn.

§ X.—THE ſaids Commiſſioners and Juſtices of peace are reby authoriſed and impowered, to give order (as they ſhall ink moſt convenient, and with leaſt greif to the Subjects) r mending of all High-ways and Paſſages, to or from any lercat-town or Sea-port within that Shire, and ſhall call fore them all ſuch perſons as ſhall ſtrait theſe Paſſages or herwayes by caſting of Ditches, or other Fulſies through e ſame ſhall make theſe High-wayes noiſome and trouble- me unto paſſengers, and ſhall puniſh and fine them ac- rding to the quality of their offence. And to the effect may be known of what breadth all common High-ways ould be to Mercat-towns, Our Soveraign Lord, with ad- ice foreſaid, Declareth, That the ſame ſhould be of twenty ot of meaſure in breadth at the leaſt: and where any are f larger breadth, they Ordain the ſame ſo to remain unal- red or ſtraitned; and that the ſaids Juſtices maintain the me: with all other Wayes from any Town in the Paroch the Paroch Churches: in the eſtate as they are: And here they find any neceſſity of other Ways from any own in the Paroch to Paroch Churches, they ſhall in- rm his *Majeſties* Secret Council thereof, who ſhall give em (after ſufficient information) their direction there- ent; according whereunto they ſhall be holden to pro- ed. And if any perſon refuſe to concur for mending of igh-ways and Paſſages, the ſaids Juſtices ſhall have power cenſure and puniſh them according to their diſcretion; ith proviſion alwayes, that if in their proceedings herein, ey uſe ſuch ſeverity or rigor as may move juſt complaints Juriſdiction touching highways and ferries. Breadth of highways. Refuſing to concur.

CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

againſt them, they ſhall be cenſured therefore by His *Majeſties* Secret Council as appertaineth.

§ XI.—THE ſaids Juſtices ſhall put His *Majeſties* acts of Parliament to execution, againſt Cutters and Deſtroyers of Planting, Green-Wood, Orchards, Gardens, Haynings, Breakers of Dove-houſes, and Cunninghares, Stealers of Bees, and Bee-hyves, uſers of unlawfull Games, with Setting Dogges, Slayers of red and black Fiſhes, and Smolts, in forbidden time, Foulers fouling in other mens Lands, Makers of Muirburn and Moſſeburn, Setters of Crooes, and Nets in Waters and Dames, having and keeping of Crooes and Yairs in forbidden time, and ſhall proceed againſt them accordingly. And for their better warrand to proceed in the premiſſes, it is His Highneſs pleaſure, that Commiſſions be granted to the ſaids Juſtices of Peace, to try and puniſh the violators of the ſaids acts; in the tryal whereof they ſhall proceed by witneſſes, or by oath of Party, and the puniſhment to be inflicted by them ſhall be a pecunial ſum, anſwerable to the circumſtance of the offence, and quality of the offenders; with ſpecial proviſion, that their Cenſures and Puniſhments ſhall extend againſt none, but thoſe againſt whom by priviledge of their Inſtructions they may lawfully proceed. And alſo with proviſion, that the ſaids Commiſſions be not extended to any perſons, who ſhall be arreſted and conveened for the ſaids crimes, before any other ordinary judge. It is alſo provided, that the ordinance and power contained in this Article, ſhall no wayes be prejudicial to any other Commiſſions or Rights whatſoever granted to other parties, whereby they have power to proceed and cenſure the crimes and offences above-written.

Cutters and deſtroyers of planting, breakers of dovecots, &c.

Mode of trial.

Puniſhment.

Foreſtallers and regraters.

§ XII.—*ITEM*. They ſhall inform the Kings *Majeſties* Council, and His Highneſs Treaſurer, or Advocat, at the leaſt once every year, of Foreſtallers and Regraters of Mercats, that order may be taken with them conform to the Acts of Parliament.

Innkeepers receiving vagabonds.

§ XIII.—IT ſhall not be leaſome to any Hoſtlar, to reſſet any Maſterleſs Men and Rebels at the Horn, any Vagabonds, or other perſons guilty of known crimes, or uſing Stouth and Reif, under the pains underwritten: To wit, fourty ſhillings to be incurred by them for the firſt fault, four pounds for the ſecond, and ten merks for the third, together with the loſing the liberty of Brewing: The incurrers of the which pains, ſhall be puniſhed according to the

ler foreſaid, by the Barrons and Maſters of the ground creupon the Hoaſtlar dwelleth, within the ſpace of fifteen es after the committing of the Fact; And if the ſaids rons and Heritors, neglect to do the ſame, within the ſpace, it ſhall be lawfull to the ſaids Juſtices, to purſue fine the Delinquents in their Courts; according to the as foreſaid, and to uplift the ſame from them; without judice alwayes of whatſoever Acts, made againſt the ſaids aſtlars in Barron Court Books, under whom they dwell, ring any higher pain then as is ſet down in this abovetten act, and alſo without prejudice of all Action, Crinal or Civil, competent of the Law, againſt the ſaids Hoaſt-, in caſe they be under the danger thereof which ſhall be taken away by any puniſhment, ſet down, and to be icted, conform to this Act. CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

XIV.—*ITEM.* They ſhall inform the Kings Treaſurer l Advocat, of breakers and contraveeners of the Acts of liament, made againſt Malt-makers, that the tranſgreſſors l contraveeners thereof may be puniſhed, conform to the nor of the ſaids Acts. Maltmakers.

XV.—THEY ſhall ſet down order in the Countrey, for ernance in time of plague, and ſhall puniſh ſeverly the beyers of the order appointed by them according to the lity of the Delinquent. Regulations to be obſerved in the time of the plague.

XVI.—THEY ſhall appoint at the Quarter Seſſions to be t in Auguſt and February, the ordinary Hire and Wages Labourers, Work-men, and Servants; and who ſhall refuſe ſerve upon the price ſet down by them, ſhall be impriſon- and further puniſhed at their diſcretion: and to the ef- t Servants may be the more willing to obey the ordinances be made by the ſaids Juſtices, for the ſaids Fees, the ſaids tices ſhall have power to decern, and compel the Maſter make payment of the Fees, appointed by their Ordinance, caſe the Servants pleaſe rather to purſue for the ſame be- e them then any other Judge. Juriſdiction touching ſervants.

XVII.—THE ſaids Juſtices ſhall take notice, in all She- doms, where there are any Gaols, and Priſon-houſes, thin any Burgh, that the ſame may be kept up and not fered to decay or become ruinous, and if there be any ire, where there is not any Gaol or Priſon-houſe, they ſhall orm his *Majeſties* Council thereof, that they may appoint d give order for building of one within the Head Burgh Priſons not to become ruinous. Priſons to be in every ſhire and borough.

CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

of the Shire, and according to the directions to be given thereanent, the Juſtices ſhall be holden to proceed.

§ XVIII.—AND becauſe there may be a great many of priſoners apprehended and committed, who having no means of their own for their maintenance and entertainment, will otherwayes famiſh and ſtarve before they can come to their tryal, who not the leſs, in regard of their crimes committed, can no wayes be put under ſurety, or otherwayes, in faults of leſs conſequence, are unable to find ſufficient Caution to be made forthcoming and anſwerable at the next Seſſion; Therefore it ſhall be lawful to the ſaids Commiſſioners and Juſtices, at their Quarter Seſſion, to rate every Paroch for a weekly proportion, for the entertainment of thoſe poor Priſoners, providing they do not exceed the ſum of five ſhillings *Scots* money at the moſt, nor under one ſhilling at the leaſt; which ſum ſhall be uplifted for that uſe by the Miniſter or Reader who ſhall ſerve at every Paroch, from ſuch Deacons, who ſhall be appointed to collect the ſame; and the ſaids ſums to be delivered by the Conſtable of the Paroch, at the Quarter Seſſions, in preſence of the whole Bench then conveened, to ſuch perſons as the ſaids Juſtices ſhall truſt therewith, and who accordingly, ſhall make due account in paying the Jaylors ſuch rates as ſhall be allowed for the poor priſoners, and making the reſt forth coming for ſuch uſe and intent of the like nature, as the ſaids Juſtices ſhall appoint.

Maintenance of poor priſoners.

Duty of magiſtrates to receive delinquents into their priſons.

§ XIX.—ALL Magiſtrats of Burghs, and keepers of any Gaols or Priſons, ſhall receive into their priſons, all ſuch perſons as either ſhall be brought by Conſtables, or ſent unto them by warrands under the hand of any one Juſtice of Peace, the ſaids Juſtices cauſing ſatisfie for their entertainment; and if any Magiſtrats, or their Jaylors, ſuffer any perſons, committed by the Juſtices to their Priſons, to eſcape, they ſhall be condignly puniſhed therefore, at the diſcretion of His *Majeſties* Council.

Craftſmens work.

§ XX.—*ITEM*, Our Soveraign Lord, with advice foreſaid, Ordains the ſaid Commiſſioners, to ſet a price upon Crafts-mens work, and upon the Ordinars of Penny-Bridals, together with the price of Shearers Fees, and to puniſh the Contraveeners, as appertaineth.

Cuſing and ſwearing.

§ XXI.—THEY ſhall cauſe ſufficient ſingle and double Ale to be brewed in every Shire, and ſhall appoint Viſitors to

at effect, with consent of the Barron and Overlord of the ound: They shall set down Acts against notorious and mmon Drunkards, and impose sums upon the Contra- eners, according to their qualities and deserts. CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

§ XXII.—Our Soveraign Lord, with advice foresaid, De- reth, That Three Justices of Peace shall be a full num- r and Session, to decide in matters occurring betwixt the ar Quarter Sessions. Quorum.

§ XXIII.—Also Declares, that no Letters of Caption ought be granted against the saids Justices, for apprehending of ebels, except they be found subject to do the same, by pos- sing of such other Offices, and places, to the which the edience and putting to execution of any such charges doth long. Apprehension of rebels.

§ XXIV.—And because there is sensible prejudice seen d felt through many parts of the Kingdom, by reason of iversity of Measures and Weights used in the same. There- re our Soveraign Lord, with advice foresaid, for removing all abuses, which may ensue in any time to come there- , Hath found expedient, and by this Decreet and Statute Parliament, Decerns, Statutes and Ordains, That there all be but one just Measure and Weight through all the rts of the Kingdom, which shall universally serve all His ghness Leiges, by which they shall sell and buy, and re- ve, and give out in all times to come; which Measure, s *Majestie* with advice foresaid, finds should be that Mea- e of *Linlithgow*, which is now commonly used and which h been used most customably through the greatest parts this Kingdom these many years by-past. And for set- g a perfect Order, whereby all the Measures that are now d may be reduced to the comformity of the saids Mea- es now authorized; and for making of proportion an- erable betwixt the lesser Measure and Weights, and the eatest, His *Majestie* with advice foresaid, hath granted full wer and Commission to *Alexander Frazer* of *Philorth*, Sir *lbert Ramsay* of *Balmayn*, *William Scott* of *Ardross*, *John urray* of *Touchadam*, Sir *Robert Hepburn* of *Keith*, *James eighton* of *Saint-Leonards*, Sir *Andrew Ramsay*, Sir *Robert urray*, Sir *Alexander Wedderburn*, *John Bell*, *William Cun- ngham*, *Andrew Glen*, Sir *William Thomson*, whom or any ven of them, His *Majesty*, with advice foresaid, Ordains meet and conveen together, at such time and place as they Weights and measures.

CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

ſhall think expedient, and to conſult and adviſe together, and to appoint and determine upon the moſt convenient means, how the ſaids Meaſures and Weights may be reduced to the conformity foreſaid; and after they have ripely adviſed therewith, and given forth their determination thereanent, they ſhall deliver the ſame, and whole courſe of their proceedings, in the ſaid matter, to the Commiſſioners and Juſtices of Peace, and to the Deans of Gild of the Head Burghs of the Shires, who ſhall be holden carefully to do their diligence to ſee the Meaſure foreſaid, now appointed, to have courſe through all parts, as well Burgh as Landwart. And that there may be one conſtant conformity in Head Burgh and Landwart, Our Soveraign Lord, with advice and conſent foreſaid, Ordains, that the ſaids Juſtices of Peace in Landwart, take tryal of the Meaſures and Weights uſed in Burgh, and to take a Note from the Magiſtrats, and Deans of Gild of every Town, of the Weights and Meaſures, and of the number thereof which the ſaids Magiſtrats and Deans of Gild in Burgh, ſhall be holden to ſhew, declare, and give up to them to the effect the ſaids Juſtices to Landwart, may conſer the ſame with the Standard now authorized; and where they find any diſconformity in the ſame, from the ſaid Standard, the ſaids Juſtices ſhall inform the Kings *Majeſties* Council thereof, that they may take order therewith as appertaineth: For it is expreſly provided by theſe preſents, that the ſaids Magiſtrats in Burgh, ſhall not be permitted to have or uſe moe Meaſures within Towns, then the number to be profeſſed by them, and given up in Writ to the ſaids Juſtices to Landwart, as ſaid is: this alwayes being reſpected, That if the ſaids Magiſtrats within Burgh, find any neceſſity for having any more Meaſures then was given up and uſed by them before, it ſhall be licenced to them to make moe Meaſures, they being anſwerable and conform to the Standard: and making the ſaids Juſtices to Landwart foreſeen and acquaint therewith, and declaring the number of the Meaſures, whereof they find the neceſſity of uſe.

Church cenſures.

§ XXV.—THE ſaids Juſtices ſhall be holden to give command and direction to their Conſtables, to apprehend any ſuch perſon, who ſhall be found contemptuouſly to have diſobeyed the Cenſures of the Church, they being lawfully required to do the ſame.

§ XXVI.—THE ſaids Juſtices of Peace, as well to Burgh as

nd, ſhall conveen, and be preſent at the Quarter-Seſſions the Shire where the Burgh and Land lyeth, give their th to the Bench at their admiſſion, make their Record, d make payment of the Fines intrometted with by them as ſtices of Peace of that Shire, to their Collector. CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

§ XXVII.—THEY ſhall appoint a ſufficient Collector for ifting the Fines and Penalties which they have power to poſe upon an Offender, and are to take Caution of him making due accompt. Collector of fines.

§ XXVIII.—THEY ſhall have during the time of Seſſions, every day of their abode, (ſo it do not exceed the num- of three dayes at the moſt at one time) allowed to eve- one of them fourty ſhillings *Scots* money, daily to be paid l uplifted by the Collector of the Fines; but neither rl, Lord, Biſhop, Privy Counſellor, or Seſſioner, ſhall have r allowance; and all ſuch Juſtices as have the benefit of t allowance, and ſhall be abſent from every ordinary arter-Seſſions, or otherwiſe when he is required lawfully the *Cuſtos Rotulorum* to any particular Meeting, ſhall in- the penaltie of fourty pounds *Scots* money, not being rfully excuſed, and the excuſe allowed by the reſt of the ſtices there aſſembled. Allowance to juſtices for their attendance. Fines for non-attendance.

§ XXIX.—THE Lords of Seſſion ſhall direct general and nmar Charges of Horning and Poynding, at the inſtance the Collector appointed in every Countrey for ingathering Fines and Penalties whatſoever incurred, upon a ſimple arge of fifteen dayes; and no Suſpenſion ſhall be grant- thereof, but upon conſignation of the ſums contained in Sentences, and by finding caution for payment of the arges, at the modification of the ſaids Lords. Horning for fines.

§ XXX.—THE ſaids Commiſſioners, at the end of every arter-Seſſions, ſhall ſend to His *Majeſties* Council, a Ca- ogue of all ſuch perſons as they have either committed, otherwayes put under ſurety, with a ſhort Abbreviate of e cauſe thereof; to the effect, that thereupon the Coun- , as they ſhall think expedient, may return to them againſt eir next Seſſion, or to the *Cuſtos Rotulorum* in the mean me, their further directions. Catalogue of priſoners.

§ XXXI.—THE ſaids Juſtices ſhall put in execution all cts of Parliament made for puniſhing all perſons whatſoever, ho ſhall Curſe or prophanely Swear, or ſhall be Mockers reproachers of Piety, or the exerciſe thereof; and ſhall Puniſhment of curſing and ſwearing.

CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

require and levy upon every Offender, the ſeveral penalties following; *viz.* Of a nobleman, twenty pounds: each Barron, twenty merks; each Gentleman, Heritor, or Burgeſs ten merks; each Yeoman, fourty ſhillings; each Servant twenty ſhillings, *Scots* money; each Miniſter in the fifth part of his years ſtipend; without prejudice to other proceedings againſt any ſuch Miniſter for the ſame. And in any of all the caſes before ſpecified in this Inſtruction, the ſaids Juſtices ſhall put in execution all ſuch Laws, as for Corporal puniſhments, as have any proviſions mentioned in them for ſuch caſes; And in caſe of the inabilities of the parties Delinquents to pay the ſum mentioned in this Inſtruction, the ſaids Juſtices ſhall put in execution ſuch Laws, as for Corporal Puniſhments, as have any proviſion mentioned in them for ſuch caſes; and that the Wives Delinquents ſhall be puniſhed according to the quality of their reſpective Huſbands, and that their Huſbands be lyable for payment of their Wives Fines reſpectively, in manner abovementioned; *toties quoties* for each fault: And all others whatſoever, not particularly herein nominat, are to pay in proportion to their reſpective qualities and degrees. And alſo, the ſaids Juſtices are to put in execution, the Acts of Parliament made for the puniſhing of all perſons that ſhall be found guilty of the ſin of Fornication; and that they levy or cauſe to be levied, the ſeveral pecunial ſums therein mentioned, *viz.* For each Nobleman, for the firſt fault four hundred pounds; each Barron two hundred pounds; each other Gentleman and Burgeſs one hundred pounds; every other perſon of inferior quality ten pounds, *Scots* money; and that theſe penalties ſhall be doubled *toties quoties*, according to the relapſes and degrees of the Offence, and quality of the Offenders. And that the ſaid penalties ſhall be levied, not only off the Man, but alſo off the Woman, according to her quality, and the degree of her offence, the one without prejudice of the other. All and ſundry which penalties ſo to be levied, are to be diſpoſed of as followeth: To wit, one half to pious uſes in the ſame Paroch where the offenders live, or the Offence hath been committed; and the other half to be divided into two equal parts, one part whereof to be given to the Informer and Proſecutor, and out of the other half, to ſatisfie the Conſtable, or other perſons who ſhall be employed for bringing the perſon accuſed to Juſtice,

In caſe of inability to pay the fines.

Puniſhment of wives committing the ſaid offences.

Of fornication.

Penalties, how diſpoſed of.

and the remainder to be disposed of to pious uses, or to satisfie the constables for their travel and service in other parts of their office, according as the Justices shall think fit. CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.

§ XXXII.—THAT the Justices shall put the Acts of Parliament in execution for the punishing of all persons found guilty of the sin of Drunkenness, or excessive Drinking, especially under the names of Healths, or haunting Taverns or Ale-houses after ten of the Clock at night, or at any time of the day, except in time of travel, or for ordinary refreshments. As also against the keepers of the Taverns or Ale-houses, that shall sell the drink unto them: Which penalties, in the saids several Acts contained, the saids Justices are to levy, or cause to be levied, upon the saids Delinquents; and the saids penalties are to be disposed of by the saids Justices, in like-manner as aforesaid. Drunkenness.

§ XXXIII.—THE saids Justices shall put in execution, all Acts of Parliament, made against such persons as shall profane the Lords day, and require or levy the penalties therein contained: which penalties foresaids the saids Justices are to dispose of, in like manner as aforesaid. Prophaning the Lord's day.

§ XXXIV.—AND at what time and whensoever one shall accuse another person or persons to be guilty of Treason, Murder or other Fellony, Blasphemy, Incest, or any other hainous Crimes: in such cases the said Justice or Justices shall forthwith cause such person or persons to be apprehended, and after inquiry made in the cause, the saids Justice or Justices, if they find cause, shall commit the Offender to prison, or take sufficient Bail, if the case by the Law be bailable: and shall take the information of the party accusing upon oath, and bind him to Prosecute, and shall take the testimony or deposition of the Witnesses likewise upon Oath, and bind them to give an evidence, and shall also take the Examination of the Party accused. All which Recognisances, Informations, Depositions, and Examinations, the said Justice or Justices, shall certifie to the next Quarter-Session, Assizes or Criminal Courts respectively, to the end the Justice may proceed against them according to the Law. In the case of heinous offences.

§ XXXV.—AND if any Nobleman, Barron or Baily, or any in their names, having power, shall acclaim the right of jurisdiction to proceed against any Delinquent apprehended by a Constable for any capital crime: Then and in that case: any of the Justices shall receive security of the said Party,

CHAS. II, 1661, c. 38. GENERAL ACT—JUSTICES.

who required the Defender to be delivered to him, that juſtice ſhall be duly miniſtred: and then ſhall cauſe delivery of the ſaid perſon to be made to him; and the ſaid Juſtice of Peace, at the next Seſſion, ſhall certifie the whole matter to the Bench; to the effect they may enquire, whether juſtice hath been accordingly miniſtred, and if any fault be found, to advertiſe His *Majeſties* Council, that order may be taken therewith.

Maintenance of the poor.

§ XXXVI.—THE ſaids Juſtices ſhall twice in the Year, at the firſt of *December* and the firſt of *June*, take up a liſt of the Poor in every Paroch within Burgh or Land; into which number there ſhall no perſon be received, who are any way able to gain their own living; and to the effect theſe poor may no longer be neceſſitat to ſeek their living, with ſuch hardſhip and difficulty by ſcandalous vaging as hitherto they have been in uſe of, the Juſtices ſhall appoint two or moe perſons of good fame and quality in every paroch, to be Overſeers of the poor in each paroch aforeſaid, and to authorize the ſaids Overſeers to make due tryal and examination of the condition and number of ſuch Poor, Aged, Sick, Lame and impotent inhabitants of the ſaid paroch, who (of themſelves) have not to maintain them, nor are able to work for their living, as alſo, of all Orphans and other poor Children within the ſaid paroch, who are left deſtitute of all help: and the ſaids Overſeers are to liſt and inroll all ſuch perſons, and to provide them ſuch a convenient Houſe for their dwelling, either a part or together, as they ſhall judge requiſit; and upon conſideration had, what the neceſſary maintenance will extend to weekly, the ſaids Overſeers are to call for the Collections of the ſaid Paroch, or other ſums appointed for the maintenance of the poor thereof; and the perſons who have the ſaid ſums in their hands, are hereby required to deliver the ſame to the ſaids Overſeers; and their Receipts under their hands, ſhall be their ſufficient Diſcharge: which ſum ſo received, the Overſeers, are to diſpoſe proportionably to the ſeveral poor people aforeſaid, according as they ſhal find their neceſſities to require, and the ſaids Overſeers are to take due tryal of the good behaviour and carriage of the poor perſon, liſted and enrolled as aforeſaid, that if any of them being ſo provided, ſhall go abroad to beg, or otherwayes miſcarry themſelves, or ſhall refuſe being able to work any manner of work that they are able to perform; in ſuch

Overſeers appointed.

Who are the poor.

ſes the ſaids Overſeers are to acquaint the ſaids Juſtices CHAS. II, 1661, c. 38, GENERAL ACT—JUSTICES.
erewith, who ſhall appoint ſuch puniſhments for the firſt
ult, as in their judgements they ſhall find requiſit; and if
ey ſhall continue in ſuch miſcarriages, they are to be hold-
and repute as Vagabonds, and ſo to be proceeded againſt
cording to the Law in that caſe provided. And to the end Begging punished.
at there may be an exact performance of the premiſſes,
e ſaids Juſtices are hereby required to call before them the
de Overſeers once in every ſix months, or oftner if they An account taken from the overſeers every ſix months.
all think expedient, to give an account upon Oath of
e whole ſums received by them, and to produce the Rolls
the ſaid poor, together with an Account of what money
ey have received any otherwayes, for the uſe of the ſaid
or; and after a due conſideration of the charge, together
th the Diſcharge thereof, to approve, allow, or diſ-allow
e ſame, as ſhall be found juſt, and the ſaids Juſtices are to
e due tryal and examination how the ſaids Overſeers have
charged their Truſt; and in caſe of the refuſal of any of
e ſaids Overſeers, nominat and elected as aforeſaid, to ac-
pt the ſaid office, or having accepted, ſhall be found ne-
gent therein, or ſhall refuſe or delay to give an account of
eir intromiſſions, when required as aforeſaid, or to de-
er what money ſhall be found reſting in their hands, un-
ſpoſed of at the end of the year unto ſuch new Overſeers
ſhall be appointed: in ſuch caſes the offenders ſhall incur
e penalty of twenty pounds *Scots*, to the uſe of the Poor; Penalty on overſeers.
d ſuffer ſuch further Cenſure, as the ſaids Juſtices, at their
arter-Seſſions, upon conſideration had of their fault, ſhall
e meet to impoſe.

§ XXXVII.—And further, the ſaids Juſtices are hereby
powered and commanded, to call for an account from
eſe who took upon them to exerce that place and office,
ring the late Uſurpation, of all Fines, Penalties and
hers, raiſed, exacted or uplifted off any perſons, and to or-
in them to deliver and make payment to them of what
th not been by ſufficient order diſpoſed of: And in caſe
any difference ariſing thereupon, that the Juſtices conſult
is *Majeſties* Council, who ſhall give their orders therein

CONSTABLES.

PART II.

CHAS. II, 1661, c. 38, GENERAL ACT—CONSTABLES.

§ I.—OUR Soveraign Lord, with advice of His Eſtates, Finds and Declares, that the Conſtables are to be made choiſe of, by the Commiſſioners and Juſtices of Peace, in their Quarter-Seſſions, throughout the whole Countrey, two at leaſt in every Paroch, or moe, according to their diſcretion, having conſideration of the quality thereof; In great Towns likewiſe, not being Cities nor free Burghs, they are to appoint a number of Conſtables proportionably to the greatneſs thereof; but in all Burghs Regall, and free Cities, the Conſtables are to be choſen by the Magiſtrates of the ſame: and they are to endure, and to be changed, from ſix to ſix months.

Appointment of conſtables.

Refuſing to accept the office.

§ II.—AND who ſhall refuſe to accept the Charge, and not to give his Oath for dutifull execution thereof, ſhall be impriſoned, and fined at the diſcretion of the Juſtices of Peace at their next ſitting.

FOLLOWETH the Oath to be taken by the Conſtables.

Oath.

I DO Swear, that I ſhall faithfully and truly diſcharge the Office of Conſtabulary, within the Paroch of, &c. induring the time appointed to me, and ſhall not for favour, reſpect or fear of any man, forbear to do what becometh me in the ſaid Office: and above all things, I ſhall regard the keeping and preſerving, of the Kings Majeſties *Peace, and ſhall at every Quarter-Seſſion and meeting of Juſtices, give true and due information of any breach which hath been made of His* Majeſties *Peace, within the bounds of my Commandement; and ſhall no way hide, cover, nor conceal the ſame, nor any of the proofs and evidences which I can give for the clearing and proving thereof: So help me GOD.*

Muſt attend the quarter-ſeſſions.

§ III.—ALL the Conſtables, or at leaſt one of every Paroch intruſted with power to anſwer for the reſt within the paroch, ſhall attend at every Quarter Seſſion, there to give information of all ſuch breaches of the Peace, and other miſdemeanors as have happened within their bounds, ſince preceding Seſſions, and have come to their knowledge; and ſhall no way hide, cover, nor conceal the ſame, nor any

proofs and evidences which they can give for the clear- and proving thereof; and otherwayes to give the Bench ther information in any thing wherein they ſhall be re- ired, and to receive from the ſaids Juſtices, at the end of Seſſion, ſuch order and direction, as they then ſhall en- n and appoint. CHAS. II, 1661, c. 38, GENERAL ACT—CONSTABLES.

IV.—EVERY Conſtable in their reſpective Paroches, ſhall rehend any ſuſpicious perſons, who are night Walkers, cannot give a good account of themſelves, and carry them he next Juſtices of Peace to find Caution for their good aviour, or otherwiſe be committed to Priſon; and the Conſtable or Conſtables ſhall ſtay and arreſt all Vaga- ds, ſturdy Beggars and Ægyptians, and carry them before e Juſtice of Peace, who ſhall take order for their com- ting to Priſon, or other puniſhments, according to the tutes of Parliament. Arreſt of ſuſpicious perſons;

V.—EVERY Conſtable, in their reſpective Paroches, ſhall ſt all idle perſons, whom they know to have no means to upon, and will not betake themſelves to any Labour, de or Occupation; and ſhall carry them before ſome Juſ- s of peace, who, after examination ſhall either commit m to Priſon, or take ſurety of them for their appearance he next Quarter Seſſion. of idle perſons.

VI.—ALL Conſtables in their reſpective Paroches, ſhall rehend every perſon or perſons, that ſhall be guilty and pable of Slaughter, Murther, Theft, or any other culpable ital crime whatſoever, and ſhall require his Neighbours ſſiſt for ſafe conveying of ſuch perſon or perſons, to the t Juſtice of Peace, who ſhall commit him or them, or Surety according to the Inſtructions given to the Juſtice Peace in ſuch like caſes. AND if any perſon or perſons, l refuſe or delay to aſſiſt the ſaid Conſtable or Conſtables, xecuting his or their offices, ſuch perſons, for refuſing or ying, ſhall be impriſoned, or otherwiſe puniſhed by the ls Juſtices at their Seſſions. Perſons guilty of ſlaughters, &c. Obligation on every perſon to aſſiſt the conſtable.

VII.—ALL Conſtables ſhal arreſt any perſons not being His *Majeſties* ſervice, who ſhall be found wearing of Hag- s, Guns or Piſtols in any ſort, and ſhall carry them before ne Juſtice of Peace, who is either to take ſecurity for eir appearance the next Quarter Seſſion, or commit them iſoners till they do the ſame, unleſſe they be Licenced from Perſons wearing arms.

CHAS. II, 1661, c. 38, GENERAL ACT—CONSTABLES.

the Councill, or ſome impowred from them to give ſuch Licences.

§ VIII.—UPON the appearance of any Fray or Stir betwixt parties, the Conſtable ſhall require the aſſiſtance of his Neighbours, for ſundering of the parties; and if there be any harm done to the Conſtable, or any of the Aſſiſtants, by them who made the Fray, they ſhall be puniſhed by the Juſtices at the next Seſſion.

Duty of conſtables on the appearance of a fray.

§ IX.—WHEN any perſon or perſons, have made a Fray, and then flee to an houſe, the Conſtable or Conſtables may follow to the houſe, to open the doors: Which if he or ſhe ſhall refuſe, he ſhall take notice of the Maſter or Keeper of the houſe, and require witneſſe thereon; and albeit the Delinquent ſhall flee further, without the bounds of the Conſtables charge, yet may the Conſtable follow and apprehend him in a freſh purſute, and crave concurrence of the Countrey for that effect.

When an affray has actually taken place.

§ X.—THE Conſtables in every Paroch, ſhall execute all ſuch Precepts and Warrands as they ſhall from time to time receive from the Juſtices of Peace.

Execution of the juſtice of peace warrants.

§ XI.—AND that the ſaids Conſtables may have ſatisfaction for their travels and pains, Our Soveraign Lord, with advice foreſaid, Ordains the ſaids Juſtices to give up particular Notes in write, to the Auditors of His *Majeſties* Exchequer, of the Fines in-brought to them, that out thereof, ſuch meaſure and ſatisfaction may be appointed and given to the ſaids Conſtables; and alſo to the Clerks of the Peace as may recompence their travels; wherein if it ſhall be found, that the ſaids Fines ſhall not be ſufficient, the ſaids Lords of His Highneſs Chequer, ſhall appoint ſuch further ſatisfaction to them, as in their diſcretion they ſhall think their labours and diligence do deſerve, and cauſe them to be paid off the ſame. And notwithſtanding of this above-written Act, and all the particulars foreſaids, contained in the ſame, Our Soveraign Lord, with advice and conſent of His ſaids Eſtates, Statutes Decerns and Declares, That the erection of the ſaids Commiſſioners and Juſtices of Peace, and grant of Juriſdiction and Priviledges to them, and the making or approbation of the particular Acts above-written, introduced in their favours, or any thing therein contained, ſhall not be in any ſort derogatory or prejudicial to the Rights, Priri-

Payment of the conſtables and clerks of the peace.

Reſervation in favour of other juriſdictions.

d Liberties, granted and beſtowed by His *Majeſty* CHAS. II, 1661, c. 38, GENERAL ACT—CONSTABLES.
ighneſs Royal Predeceſſors of before, to any of His
Subjects, of whatſoever eſtate or quality from the
the loweſt: But Declares, that the ſaids Rights,
s and Liberties ſhall remain in their own integrity
e, unhurt or unprejudged by the Premiſſes, or any
reſt in the ſaids Articles and every one of them,
olden as eſpecially reſerved and excepted out of the

—AND leaſt this above-written Reſervation, ſhould
gether to deſtroy the power granted to the ſaids Juſ-
ſhould beget controverſie betwixt them and any
ing right and Liberty of Juriſdiction as ſaid is, Our
Lord, with advice foreſaid, for removing of all
which may ariſe betwixt them thereanent, De-
nat it ſhall not be lawfull nor permitted to the ſaids
to make any Citation of Parties before their Courts, Delay of fifteen days to give other judges time to uſe their right.
piring of the ſpace of fifteen dayes after the com-
the Fact for the which the Committer is to be con-
At the compleat out-running of the which ſpace,
ving Power and Juriſdiction as ſaid is, hath omit-
egleted to uſe and exerce the Priviledge and Li-
their Right and Power; It ſhall then be lawful to
Juſtices, to make Citation, and to proceed againſt
s, according to the power and Authority given to
His Highneſs, with advice foreſaid, and conform to
ular Articles above-written in all points, and no
es.

—IF any Party complain to a Conſtable that he is Duty of conſtable on complaint made to him of threats.
by another, then ſhall the Conſtable apprehend the
r and carry him with the Party Complainer before
Juſtice of Peace, and if he refuſe to go, then ſhall
him to Priſon.

—WHICH all and ſundry the premiſſes, Our Sove- Ratification
d, with advice and conſent foreſaid, Ratifies and
in all points, in manner as the ſame proports.
s unto them the ſtrength and force of Acts and Or-
of Parliament, and Ordains execution to paſs upon
as effeirs.

No. X.

Queen ANNE's *Parliament*, 1707, *c.* 7.

ACT RATIFYING AND APPROVING THE TREATY OF UNION.

ANNE, 1707 c. 7, APPROVING THE UNION

THE Eſtates of Parliament Conſidering, That Articles of Union of the Kingdoms of *Scotland* and *England*, were agreed, &c. Doth Ratify, Approve and Confirm the ſame, with the Additions and Explanations contained in the ſaids Articles, in manner, and under the Proviſion after-mentioned, whereof the Tenor follows.

ART. 18.

XVIII. That the Laws concerning Regulation of Trade, Cuſtoms and ſuch Exciſes, to which *Scotland* is, by virtue of this Treaty, to be lyable, be the ſame in *Scotland* from and after the Union as in *England*, and that all other Laws, in uſe within the Kingdom of *Scotland*, do after the Union, and notwithſtanding thereof, remain in the ſame Force as before (except ſuch as are contrary to or inconſiſtent with this Treaty) but alterable by the Parliament of *Great Britain*; With this Difference betwixt the Laws concerning publick Right, Policy and civil Government, and thoſe which concern privat Right, That the Laws which concern publick Right, Policy and civil Government, may be made the ſame throughout the whole United Kingdom, but that no Alteration be made in Laws which concern privat Right, except for evident Utility of the Subjects within *Scotland*.

Trade, cuſtom, exciſes.

Public policy.

Private right.

—ART. 19.

XIX. That the Court of Seſſion or College of Juſtice, do, after the Union, and notwithſtanding thereof, remain in all time coming within *Scotland*, as it is now conſtituted by the Laws of that Kingdom, and with the ſame Authority and Privileges as before the Union; ſubject nevertheleſs to ſuch Regulations, for the better Adminiſtration of Juſtice, as ſhall be made by the Parliament of *Great Britain*; And that hereafter none ſhall be named by Her Majeſty or Her Royal Succeſſors to be Ordinary Lords of Seſſion, but ſuch who have ſerved in the College of Juſtice as Advocats or principal Clerks of Seſſion for the

College of juſtice.

ſpace of Five Years, or as Writers to the Signet for the ſpace of Ten Years, With this Proviſion, That no Writer to the Signet be capable to be admitted a Lord of the Seſſion, unleſs he undergo a privat and publick Tryal on the Civil Law, before the Faculty of Advocats, and be found by them qualified for the ſaid Office Two Years before he be Named to be a Lord of the Seſſion, yet ſo as the Quaſications made or to be made, for capacitating perſons to be named Ordinary Lords of Seſſion may be altered by the Parliament of *Great Britain*. And that the Court of Juſticiary do alſo, after the Union, and notwithſtanding there- Court of juſticiary; ſ, Remain in all time coming, within *Scotland*, as it is now inſtituted by the Laws of that Kingdom, and with the me Authority and Privileges as before the Union; ſubct, nevertheleſs, to ſuch Regulations as ſhall be made by e Parliament of *Great Britain*, and without prejudice of her Rights of Juſticiary: And that all Admiralty Juriſ- of admiralictions be under the Lord high Admiral or Commiſſion- ty; rs for the Admiralty of *Great Britain* for the time being; nd that the Court of Admiralty now Eſtabliſhed in *Scotnd* be continued; and that all Reviews, Reductions or ſpenſions of the Sentences in Maritim Caſes, compent to the Juriſdiction of that Court, remain in the ſame anner after the Union as now in *Scotland*, until the Parament of *Great Britain* ſhall make ſuch Regulations and lterations as ſhall be judged expedient for the whole Unit- Kingdom; ſo as there be alwiſe continued in Scotland a ourt of Admiralty, ſuch as in *England*, for Determinon of all Maritim Cauſes relating to privat Rights in *otland*, competent to the Juriſdiction of the Admiralty ourt; ſubject nevertheleſs to ſuch Regulations and Alrations as ſhall be thought proper to be made by the Parament of *Great Britain*; And that the Heretable Rights Admiralty, and Vice-Admiralties in *Scotland* be reſerv- to the reſpective Proprietors, as Rights of Property; bject nevertheleſs, as to the manner of Exerciſing ſuch eretable Rights, to ſuch Regulations and Alterations as all be thought proper to be made by the Parliament of reat Britain: And that all other Courts now in Being other courts ithin the Kingdom of *Scotland* do remain; but ſubject to Alterations by the Parliament of *Great Britain*: And that

ANNE. 1707 c. 7. APPROVING THE UNION —ART. 19.

ANNE, 1707 c. 7, APPROVING THE UNION —ART. 19.

all inferior Courts within the ſaid Limits, do remain ſubordinat as they are now to the Supream Courts of Juſtice within the ſame in all time coming; And that no Cauſes in *Scotland* be cognoſcible by the Courts of Chancery, Queens-Bench, Common Pleas, or any other Court in *Weſtminſter-hall*; and that the ſaid Courts or any other of the like Nature, after the Union, ſhall have no power to Cognoſce, Review or Alter the Acts or Sentences of the Judicatures within *Scotland*, or ſtop the Execution of the ſame; And that there be a Court of Exchequer in *Scotland* after the Union, for deciding Queſtions concerning the Revenues of Cuſtoms and Exciſes there, having the ſame Power and Authority in ſuch Caſes as the Court of Exchequer has in *England*; and that the ſaid Court of Exchequer in *Scotland* have Power of paſſing Signatures, Gifts, Tutories, and in other things as the Court of Exchequer at preſent in *Scotland* hath; and that the Court of Exchequer that now is in *Scotland* do remain until a new Court of Exchequer be ſettled by the Parliament of *Great Britain* in *Scotland* after the Union: And that after the Union, the Queens Majeſty and Her Royal Succeſſors may continue a privy Council in *Scotland*, for preſerving of publick Peace and Order, until the Parliament of *Great Britain* ſhall think fit to alter it, or eſtabliſh any other effectual Method for that End. XXIV. That, from and after the Union, there be one Great Seal for the United Kingdom of *Great-Britain*, which ſhall be different from the Great-Seal now uſed in either Kingdom; and that the Quartering the Arms, and the Rank and precedency of the Lyon King of Arms of the Kingdom of *Scotland*, as may beſt ſute the Union, be left to Her Majeſty; And that in the mean time the Great-Seal of *England* be uſed as the Great-Seal of the United Kingdom, and that the Great-Seal of the United Kingdom be uſed for Sealing Writs to Elect and Summon the Parliament of *Great-Britain*, and for Sealing all Treaties with Foreign Princes and States, and all publick Acts, Inſtruments and Orders of State which concern the whole United Kingdom, and in all other Matters relating to *England*, as the Great-Seal of *England* is now uſed; And that a Seal in *Scotland*, after the Union, be always kept and made uſe of in all things relating to priv-

Court of exchequer.

Privy council.

—ART. 24.

Great ſeal.

; or Grants which have uſually paſſed the Great- ANNE, 1707
f *Scotland*, and which only concern Offices, Grants, c. 7, APPROVING
iſſions and privat Rights within that Kingdom; THE UNION
at until ſuch Seal ſhall be appointed by Her Majeſ-
preſent Great-Seal of *Scotland* ſhall be uſed for ſuch
es; And that the privy-Seal, Signet, Caſſet, Signet Seal inſtead
Juſticiary-Court, Quarter-Seal, and Seals of Courts of the Scot-
ed in *Scotland* be continued; but that the ſaid Seals tiſh great
red and adapted to the State of the Union as Her ſeal.
r ſhall think fit: And the ſaid Seals, and all of them, Privy ſeal,
: Keepers of them, ſhall be ſubject to ſuch Regula- ſignet, &c.
s the Parliament of *Great-Britain* ſhall hereafter
And that the Crown, Scepter and Sword of State, Regiſter.
cords of Parliament, and all other Records, Rolls
giſters whatſoever, both publick and privat, Gene-
l particular, and Warrants thereof continue to be
as they are within that part of the United King-
w called *Scotland*, and that they ſhall ſo remain, in all
ming, notwithſtanding of the Union. XXV. That —ART. 25.
s and Statutes in either Kingdom, ſo far as they
trary to, or inconſiſtent with the Terms of theſe
s, or any of them, ſhall from and after the Union
d become void, and ſhall be ſo declared to be by
ective Parliaments of the ſaid Kingdoms.

No. XI.

6 *ANNE*, c. 6.

T FOR RENDERING THE UNION OF THE TWO KING-
DOMS MORE INTIRE AND COMPLETE.

REAS by Her Majeſties great Wiſdom and Good-
e Union of the Two Kingdoms hath been happily
l, and the whole Iſland is thereby Subject to one
gnty, and Repreſented by one Parliament: To the
erefore that the ſaid Union may be rendred more
te and Intire, Be it Enacted by the Queens moſt
nt Majeſty by and with the Advice and Conſent of

6 ANNE, c. 6, COMPLETING THE UNION

the Lords Spiritual and Temporal, and Commons in this preſent Parliament Aſſembled, and by the Authority of the ſame, That from and after the Firſt Day of *May*, in the Year of our Lord, One thouſand ſeven hundred and eight, the Queens Majeſty, Her Heirs and Succeſſors, ſhall

Privy council.

have but one Privy Council in or for the Kingdom of *Great Britain*, to be Sworn to Her Majeſty, Her Heirs and Succeſſors, as Sovereigns of *Great Britain*, and ſuch Privy Council ſhall have the ſame Powers and Authorities as the Privy Council of *England* Lawfully Had, Uſed and Exerciſed at the time of the Union, and none other.

Appointment of juſtices of peace,

AND to the end the Publick Peace may be in like manner Preſerved throughout the whole Kingdom, Be it further Enacted by the Authority aforeſaid, That in every Shire and Stewartry within that Part of *Great Britain* called *Scotland*, and alſo in ſuch Cities, Boroughs, Liberties and Precincts within *Scotland*, as Her Majeſty, Her Heirs or Succeſſors, ſhall think fit, there ſhall be appointed by Her Majeſty, Her Heirs or Succeſſors, under the Great Seal of *Great Britain*, a ſufficient Number of Good and Lawful Men to be Juſtices of the Peace within their reſpective Shires, Stewartries, Cities, Boroughs, Liberties or Precincts, which Perſons ſo appointed over and above the ſeveral Powers and Authorities veſted in Juſtices of the Peace by the Laws of *Scotland*, ſhall be further Authorized to Do, Uſe and Exerciſe over all Perſons within their ſeveral Bounds, whatever doth appertain to the Office and Truſt of a Juſtice of Peace, by Virtue of the Laws and Acts of Parliament made in *England* before the Union,

with the ſame powers as Engliſh juſtices.

in relation to or for the Preſervation of the Publick Peace. Provided nevertheleſs, That in the Seſſions of the Peace the Methods of Tryal and Judgments ſhall be according to the Laws and Cuſtoms of *Scotland*.

Ratification

PROVIDED, That nothing in this Act contained ſhall be conſtrued to Alter or Infringe any Rights, Liberties or Privileges heretofore Granted to the City of *Edinburgh*, or to any other Royal Borough, of being Juſtices of the Peace within their reſpective Bounds.

AND whereas by an Act made in *Scotland* in the Third Seſſion of the Second Parliament of the late King *Charles* the Second, Intituled, *An Act concerning the Regulation of*

the Judicatures, ſeveral Good and Wholſom Proviſions were made concerning the Juſtice Court, and amongſt others it was thereby Enacted, That once a Year Circuit-Courts ſhould be kept at the Time and Places in the ſaid Act mentioned: Now for the better and ſpeedier Adminiſtration of Juſtice, and further Preſervation of the Publick Peace in that Part of the Kingdom of *Great Britain* called *Scotland*, Be it alſo Enacted by the Authority aforeſaid, That for the future Twice in the Year, that is to ſay, In the Months of *April* or *May*, and in the Month of *October*, Circuit-Courts ſhall be kept in the ſeveral Places in the ſaid Act mentioned, and in manner and form as in the ſaid Act contained. 6 ANNE, c. 6, COMPLETING THE UNION. Circuit courts.

AND for the more Uniform and Expreſs Method of Electing and Returning Members of Parliament, Be it likewiſe, &c.

No. XII.

24 *GEORGE II, Chap.* 44.

An Act for the rendering Juſtices of the Peace more Safe in the Execution of their Office, and for indemnifying Conſtables and Others acting in Obedience to their Warrants.

WHEREAS Juſtices of the Peace are diſcouraged in the Execution of their Office, by vexatious Actions brought againſt them for or by reaſon of ſmall and involuntary Errors in their Proceedings: And whereas it is neceſſary that they ſhould be (as far as is conſiſtent with Juſtice, and the Safety and Liberty of the Subject, over whom their Authority extends) rendered ſafe in the Execution of the ſaid Office and Truſt: And whereas it is alſo neceſſary that the Subjects ſhould be protected from all wilful and oppreſſive Abuſe of the ſeveral Laws and Statutes committed to the care and execution of the ſaid Juſtices of the Peace; be it enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Par- Preamble.

GEORGE II, 24, c. 44, SECURING JUSTICES OF THE PEACE.

liament aſſembled, and by the Authority of the ſame, That from and after the Twenty-fourth Day of June, One thouſand ſeven hundred and fifty-one, no Writ ſhall be ſued out againſt, nor any Copy of any Proceſs, at the ſuit of a Subject, ſhall be ſerved on any Juſtice of the Peace, for any thing by him done in the execution of his Office, until notice in Writing of ſuch intended Writ or Proceſs ſhall have been delivered to him, or left at the uſual Place of his Abode, by the Attorney or Agent for the Party who intends to ſue, or cauſe the ſame to be ſued out or ſerved at leaſt one Kalendar Month before the ſuing out or ſerving the ſame; in which notice ſhall be clearly and explicitly contained the cauſe of Action which ſuch Party hath, or claimeth to have, againſt any ſuch Juſtice of the Peace; on the back of which Notice ſhall be Indorſed the Name of ſuch Attorney or Agent, together with the Place of his Abode, who ſhall be intitled to have the Fee of Twenty Shillings for the Preparing and Serving ſuch Notice, and no more.

No writ to be iſſued out againſt any juſtice for what he ſhall do in the execution of his office till notice be given him.

And he may tender amends;

AND be it further enacted, That it ſhall and may be lawful to and for ſuch Juſtice of Peace, at any time within one Kalendar Month after ſuch notice given as aforeſaid, to tender amends to the Party complaining, or to his or her Agent or Attorney; and in caſe the ſame is not excepted, to plead ſuch Tender in Bar to any Action to be brought againſt him, grounded on ſuch Writ or Proceſs, together with the Plea of Not Guilty, and any other Plea, with leave of the Court; and if, upon iſſue joined thereon, the Jury ſhall find the Amends ſo tendered to have been ſufficient, then they ſhall give a Verdict for the defendant; and in ſuch caſe, or in caſe the Plaintiff ſhall become Nonſuit, or ſhall diſcontinue his or her Action, or in caſe Judgment ſhall be given for ſuch Defendant or Defendants, upon demurer, ſuch Juſtice ſhall be intitled to the like Coſts, as he would have been intitled unto, in caſe he had pleaded the General Iſſue only; and if upon iſſue ſo joined, the Jury ſhall find that no Amends were tendered, or that the ſame were not ſufficient; and alſo againſt the Defendant or Defendants on ſuch other Plea or Pleas, then they ſhall give a Verdict for the Plaintiff, and ſuch Damages as they ſhall think proper, which

and plead the ſame in bar to the action, &c.

he or ſhe ſhall recover, together with his or her Coſts of Suit. GEORGE II, 24, c. 44, SECURING, &c.

AND be it further enacted, That no ſuch Plaintiff ſhall recover any Verdict againſt ſuch Juſtice, in any caſe where the Action ſhall be grounded on any Act of the Defendant, as Juſtice of the Peace, unleſs it is moved upon the Trial of ſuch Action, that ſuch notice was given as aforeſaid, but in default thereof ſuch Juſtice ſhall recover a Verdict and Coſts, as aforeſaid. Plaintiff not to recover without proof made that ſuch notice was given.

AND be it further enacted, by the Authority aforeſaid, That in caſe ſuch Juſtice ſhall neglect to tender any Amends, or ſhall have tendered inſufficient Amends before the Action brought, it ſhall and may be lawful for him, by leave of the Court where ſuch Action ſhall depend, at any time before Iſſue joined, to pay into Court ſuch ſum of Money as he ſhall ſee fit; whereupon ſuch Proceedings, Orders, and Judgements, ſhall be had, made, and given, in and by ſuch Court, as in other Actions where the Defendant is allowed to pay Money into Court. Juſtices may, by leave, pay into court, before iſſue joined, ſuch ſum as he ſhall think fit.

AND be it further enacted, That no Evidence ſhall be permitted to be given by the Plaintiff on the Trial of any ſuch Action as aforeſaid, of any Cauſe of Action, except ſuch as is contained in the Notice hereby directed to be given. Evidence not to be given of any cauſe but ſuch as is contained in the notice.

AND be it further enacted, by the Authority aforeſaid, That from and after the ſaid Twenty-fourth Day of June, One thouſand ſeven hundred and fifty-one, no Action ſhall be brought againſt any Conſtable, Headborough, or other Officer, or againſt any Perſon or Perſons acting by his Order, and in his aid, for any thing done in obedience to any Warrant under the hand or ſeal of any Juſtice of the Peace, until demand hath been made or left at the uſual Place of his Abode, by the Party or Parties intending to bring ſuch Action, or by his, her, or their Attorney or Agent, in writing, ſigned by the Party demanding the ſame, of the peruſal and Copy of ſuch Warrant, and the ſame has been refuſed or neglected for the ſpace of ſix Days after ſuch demand; and in caſe after ſuch demand and compliance therewith, by ſhewing the ſaid Warrant to, and permitting a Copy to be taken thereof, by the Party Actions not to be brought againſt any conſtable acting in obedience to juſtices' warrant, till demand made of the ſight and copy of the warrant, and refuſal thereof, &c.

GEORGE II, 24. c. 44. SECURING JUSTICES OF THE PEACE.

demanding the ſame, any action ſhall be brought againſt ſuch Conſtable, Headborough, or other Officer, or againſt ſuch Perſon or Perſons acting in his aid, for any ſuch cauſe as aforeſaid, without making the Juſtice or Juſtices, who ſigned or ſealed the ſaid Warrant, Defendant, or Defendants, that on producing and moving ſuch Warrant at the Trial of ſuch Action, the Jury ſhall give their Verdict for the Defendant or Defendants, notwithſtanding any defect of Juriſdiction in ſuch Juſtice or Juſtices; and if ſuch Action be brought jointly againſt ſuch Juſtice or Juſtices, and alſo againſt ſuch Conſtable, Headborough, or other Officer, or Perſon or Perſons acting in his or their aid as aforeſaid, then on Proof of ſuch Warrants the Jury ſhall find for ſuch Conſtable, Headborough, or other Officer, and for ſuch Perſon or Perſons ſo acting as aforeſaid, notwithſtanding ſuch defect of Juriſdiction as aforeſaid; and if the Verdict ſhall be given againſt the Juſtice or Juſtices, that in ſuch caſe the Plaintiff or Plaintiffs ſhall recover his, her, or their, Coſts againſt him or them, to be rated in ſuch manner by the proper Officer as to include ſuch Coſts as ſuch Plaintiff or Plaintiffs are liable to pay to ſuch Defendant or Defendants, for whom ſuch Verdict ſhall be found as aforeſaid.

Where the judge ſhall certify the cauſe of action was wilfully committed, plaintiff to recover double coſts

PROVIDED always, That where the Plaintiff in any ſuch action againſt any Juſtice of the Peace ſhall obtain a Verdict, in caſe the Judge, before whom the cauſe ſhall be tried, ſhall in open Court certify, on the back of the Record, that the Injury, for which ſuch Action was brought, was wilfully and maliciouſly committed, the Plaintiff to have and receive double Coſts of Suit.

Limitations of actions.

PROVIDED alſo, and be it enacted by the Authority aforeſaid, That no Action ſhall be brought againſt any Juſtice of the Peace for any thing done in the execution of his Office, or againſt any Conſtable, Headborough, or other Officer, or Perſons, acting as aforeſaid, unleſs commenced within Six Kalendar Months after the Act Committed.

No. XIII.

8 *George I, c.* 5.

An Act for granting the People called Quakers, ſuch Forms of Affirmation or Declaration, as may remove the Difficulties which many of them lie under.

GEORGE I, 8, c. 5.

Narrative of former ſtatutes.

WHEREAS, for giving ſome Eaſe to ſcrupulous Conſciences, an Act was made in the Firſt Year of the Reign of their late Majeſties King *William* and Queen *Mary*, [Intituled, *An Act for Exempting their Majeſties Proteſtant Subjects, diſſenting from the Church of* England, *from the Penalties of certain Laws,*] whereby (among other things) a Declaration of Fidelity, in the Form therein expreſſed, is appointed to be made and ſubſcribed by certain Perſons, Diſſenters from the Church of *England*, who ſcruple the taking of any Oath: And whereas an Act was made in the Seventh and Eighth Years of the Reign of His ſaid late Majeſty King *William* the Third, [Intituled, *An Act that the Solemn Affirmation and Declaration of the People called* Quakers, *ſhall be accepted inſtead of an Oath in the uſual Form,*] under the Proviſoes therein mentioned; which Act being at firſt temporary, was afterwards farther continued by an Act made in the Thirteenth and fourteenth Years of the Reign of his ſaid late Majeſty; and the ſame Act is made perpetual by an Act made in Firſt Year of His preſent Majeſty's Reign; by which laſt mentioned Act a Form, importing the Effect of the Abjuration-Oath, is preſcribed to be taken by the ſaid People called *Quakers*: And whereas the Inconveniences to the ſaid People called *Quakers*, and their Families, and to others requiring their teſtimony, in many caſes are not ſufficiently avoided, by reaſon of Difficulties among the ſaid *Quakers*, relating to the Forms of the Declaration, Affirmation, and Abjuration before-mentioned, as the ſame are now preſcribed: And whereas it is evident, that the

GEORGE I, 8, c. 5, RELIEVING QUAKERS.

ſaid People called *Quakers*, have not abuſed the Liberty and Indulgence allowed to them by Law; and they have given Teſtimony of their Fidelity and Affection to his Majeſty, and the Settlement of the Crown in the Proteſtant Line; and it is reaſonable to give them farther Eaſe and Relief: May it therefore pleaſe Your moſt Excellent Majeſty, That it may be Enacted, and be it Enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, and by the Authority of the ſame, That in all Caſes, where, by Law, any *Quaker* is or ſhall be required or permitted to make and ſubſcribe the Declaration of Fidelity in the Form preſcribed by the ſaid firſt mentioned Act, or to make the Solemn Affirmation or Declaration in the Form preſcribed by the ſaid Act of the Seventh and Eighth Years of the Reign of His ſaid late Majeſty King *William* the Third, or to take the Effect of the Abjuration Oath in the Form preſcribed by the ſaid Act of the firſt Year of His preſent Majeſty's Reign, every ſuch *Quaker* ſhall, inſtead of ſuch firſt mentioned Declaration of Fidelity, make and ſubſcribe a Declaration of Fidelity in the following Words, *viz.*

Declaration of fidelity.

I *A B do ſolemnly and ſincerely promiſe and declare, That I will be true and faithful to King* George; *and do ſolemnly, ſincerely, and truly profeſs, teſtify and declare, that I do from my Heart abhor, deteſt, and renounce, as impious and heretical, that wicked Doctrine and Poſition, That Princes excommunicated or deprived by the Pope, or any Authority of the See of* Rome, *may be depoſed or murthered by their Subjects, or any other whatſoever. And I do declare, that no Foreign Prince, Perſon, Prelate, State, or Potentate, hath, or ought to have, any Power, Juriſdiction, Superiority, Preheminence, or Authority Eccleſiaſtical or Spiritual, within this Realm.*

AND inſtead of the ſolemn Affirmation or Declaration, in the Form preſcribed by the ſaid Act of the ſeventh and eighth Years of the Reign of His ſaid late Majeſty King *William* the Third, every ſuch *Quaker* ſhall make the Solemn Declaration or Affirmation following, *viz.*

Affirmation

I A B do ſolemnly, ſincerely, and truly declare and affirm.

AND inſtead of the Form preſcribed by the ſaid Act of the firſt Year of His preſent Majeſty's Reign, for the Effect of the Abjuration Oath, every ſuch *Quaker* ſhall take the Effect thereof in the following Words, *viz.* GEORGE I, 8, c. 5, RELIEVING QUAKERS.

Subſtitute for the abjuration oath.

I A B do ſolemnly, ſincerely, and truly acknowledge, profeſs, teſtify, and declare, That King George *is Lawful and Rightful King of this Realm, and of all other His Dominions and Countries thereunto belonging. And I do ſolemnly and ſincerely declare, That I do believe the Perſon pretended to be the Prince of* Wales, *during the Life of the late King* James, *and ſince his Deceaſe, pretending to be, and taking upon himſelf the Stile and Title of King of* England, *by the Name of* James *the Third, or of* Scotland, *by the Name of* James *the Eighth, or the Stile and Title of King of* Great Britain, *hath not any Right or Title whatſoever to the Crown of this Realm, nor any other the Dominions thereunto belonging; and I do renounce and refuſe any Allegiance or Obedience to him. And I do ſolemnly promiſe, that I will be true and faithful, and bear true Allegiance to King* George, *and to him will be faithful againſt all traiterous Conſpiracies and Attempts whatſoever, which ſhall be made againſt His Perſon, Crown, or Dignity. And I will do my beſt Endeavour to diſcloſe and make known to King* George, *and his Succeſſors, all Treaſons and traiterous Conſpiracies, which I ſhall know to be made againſt him, or any of them. And I will be true and faithful to the Succeſſion of the Crown againſt him the ſaid* James, *and all other Perſons whatſoever, as the ſame is and ſtands ſettled by an Act, Intituled,* An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown, *to the late Queen* Anne, *and the Heirs of her Body, being Proteſtants; and as the ſame, by one other Act, Intituled,* An Act for the further Limitation of the Crown, and better Securing the Rights and Liberties of the Subject, *is and ſtands ſettled and intailed, after the Deceaſe of the ſaid late Queen, and for Default of Iſſue of the ſaid late Queen, to the late Princeſs Sophia, Electoreſs and Dutcheſs Dowager of* Hanover, *and the Heirs of her Body, being Proteſtants. And all theſe Things I do plainly and ſincerely acknowledge, promiſe, and declare, according to theſe expreſs Words by me ſpoken, and according to the plain and common Senſe and*

GEORGE I, 8 c. 5. RELIEVING QUAKERS.

Underſtanding of the ſame Words, without any Equivocation, mental Evaſion, or ſecret Reſervation whatſoever. And I do make this Recognition, and Acknowledgment, Renunciation, and Promiſe, heartily, willingly, and truly.

AND all Perſons, authorized or required to adminiſter or tender, either the ſaid former Declaration of Fidelity, or the ſaid former Solemn Affirmation or Declaration, or the former Effect of the Abjuration Oath aforeſaid, ſhall be, and are hereby authorized and required to adminiſter and tender the ſame reſpectively to the ſaid People called *Quakers*, in the Words by this Act reſpectively appointed.

Effect of the declarations.

AND be it further Enacted by the Authority aforeſaid, That the Declaration of Fidelity, and Solemn Affirmation or Declaration, and the Effect of the Abjuration Oath, appointed by this Act for the ſaid People called *Quakers*, inſtead of the reſpective Forms preſcribed for the ſame by the ſaid recited Acts, ſhall reſpectively be adjudged and taken to be of ſuch and the ſame Force and Effect, and no other, to all Intents and Purpoſes, in all Courts of Juſtice and elſewhere, as if ſuch *Quaker* had made and ſubſcribed the Declaration of Fidelity, or had made the Solemn Affirmation or Declaration, or had taken the Effect of the Abjuration Oath, in the reſpective Forms appointed by the ſaid recited Acts: And if any Perſon, making ſuch Affirmation or Declaration, as is appointed by this Act to be made, inſtead of the Affirmation or Declaration in the Form preſcribed by the before-mentioned Act of the Seventh and Eighth Years of the Reign of His ſaid late Majeſty King *William* the Third, ſhall be lawfully convicted of wilful, falſe, and corrupt Affirming or Declaring any Matter or Thing, which if ſworn in the common or uſual form, would have amounted to wilful and corrupt Perjury, every ſuch Perſon, ſo offending, ſhall incur and ſuffer ſuch and the ſame Pains, Penalties, and Forfeitures, as are inflicted or enacted by the Laws and Statutes of this Realm, againſt Perſons convicted of wilful and corrupt Perjury.

Corrupt affirming is perjury.

PROVIDED always, That all Clauſes, Proviſions and Exceptions, contained in the ſaid recited Acts or any of them, not hereby expreſly altered or repealed, ſhall be of ſuch and the ſame Force and Effect, as they were before the making of this Act.

No. XIV.

22 *Geo. II, c.* 46.

An Act to continue, &c. and for allowing Quakers to make Affirmation in Cases where an Oath is or shall be required.

§ XXXIV. And whereas a Doubt hath arisen, whether e solemn Affirmation or Declaration of the People called *uakers*, prescribed by an Act made in the Eighth Year of e Reign of His late Majesty King *George* the First, (intiled, *An Act for granting the People called* Quakers, *such rms of Affirmation or Declaration as may remove the ifficulties which many of them lie under*) can be allowed d taken instead of an Oath, in any Case wherein by any ct or Acts of Parliament an Oath is required, unless the id Affirmation or Declaration be by such Act or Acts of arliament particularly and expressly directed to be allowl and taken instead of such Oath; by Reason of which oubt the Testimony of the said People called *Quakers* is equently refused, whereby the said People, and others quiring their Evidence, are subjected to great Inconveencies: Therefore, for removing the said Doubt, be it nacted and Declared by the Authority aforesaid, That in l Cases wherein by any Act or Acts of Parliament now Force, or hereafter to be made, an Oath is or shall be lowed, authorized, directed, or required, the solemn Afrmation or Declaration of any of the People called *Quakrs*, in the Form prescribed by the said Act made in the ighth Year of His said late Majesty's Reign, shall be alowed and taken instead of such Oath, although no particular or express Provision be made for that Purpose in such Act or Acts; and all Persons who are or shall be authorized or required to administer such Oath, shall be, and are hereby authorized and required to administer the said Affirmation or Declaration; and the said solemn Affirmation

GEORGE II, 22, c. 4, —RELIEVING QUAKERS.

or Declaration, ſo made as aforeſaid, ſhall be adjudged and taken, and is hereby enacted and declared to be of the ſame Force and Effect, to all Intents and Purpoſes, in all Courts of Juſtice, and other Places, where by Law an Oath is or ſhall be allowed, authorized, directed, or required, as if ſuch *Quaker* had taken an Oath in the uſual Form; and if any Perſon making ſuch Affirmation or Declaration, ſhall be lawfully convicted of having wilfully, falſely, and corruptly affirmed, or declared any Matter or Thing, which, if the ſame had been depoſed upon Oath in the uſual Form, would have amounted to wilful and corrupt Perjury, every Perſon ſo offending ſhall incur and ſuffer the like Pains, Penalties, and Forfeitures, as by the Laws and Statutes of this Realm are to be inflicted on Perſons convicted of wilful and corrupt Perjury.

Penalty on falſe affirming.

PROVIDED, nevertheleſs, and be it enacted, That no *Quaker* ſhall, by virtue of this Act, be qualified or permitted to give Evidence in any Criminal Caſes, or to ſerve on Juries, or to bear any Office or Place of Profit in the Government; any thing herein contained to the contrary notwithſtanding.

No. XV.

3 *Geo. II, c.* 32.

An Act for enabling the Judges of the Court of Seſſion in Scotland, *to make an adjournment of the ſaid Court; and for limiting the Time for the Execution of Sentences importing Corporal Puniſhments, in that Part of the Kingdom.*

Adjournment of the court of ſeſſion.

WHEREAS the continued Sittings of the Court of Seſſion in *Scotland*, from the Firſt Day of *November*, to the laſt Day of *February*, yearly without any Receſs, has been found inconvenient and burthenſome, be it therefore enacted by the King's moſt Excellent Majeſty, by and with

e Advice and Conſent of the Lords Spiritual and Tem- GEORGE II, 3. c. 32, —EXECUTION OF CRIMINAL SENTENCES.
ral, and Commons, in this preſent Parliament aſſem-
d, and by Authority of the ſame, That it ſhall and may
lawful for the Judges of the ſaid Court of Seſſion in
tland, and they are hereby impowered to make an ad-
rnment of their Seſſions on ſuch Day, betwixt the Fif-
nth Day of *December*, and the Fifteenth Day of *Janu-*
, yearly, and for ſuch time as they ſhall judge moſt
nvenient, not exceeding the Space of Ten Days; any
w, Statute, or Uſage, to the contrary notwithſtanding.

AND whereas by an Act paſſed in the Eleventh Year of Inflictions of capital puniſhments,
: Reign of His late Majeſty King *George* the Firſt [in-
uled, *An Act for the more effectual diſarming the High-
ds, in that Part of* Great Britain *called* Scotland, *and
the better ſecuring the Peace and Quiet of that Part of
Kingdom*] it is enacted, That from and after the Firſt
y of *June*, One thouſand ſeven hundred and twenty
, no Sentence or Judgment of any Civil Magiſtrate or
urt of Judicature, importing a Capital or Corporal Pu-
ıment, if pronounced in *Edinburgh*, or any other Part
Scotland, to the Southward of the *Frith*, or River of on this ſide Forth.
rth, ſhould (for the Reaſons in the ſaid Clauſe mention-
be put in Execution within leſs than Thirty Days af-
the Date of ſuch Sentence; and if pronounced in any
ce to the Northward of the ſaid *Frith*, or River of
rth, ſhould be put in Execution in leſs than Forty Days
er the Date of ſuch Sentence: And whereas the Main-
ance and ſecuring in Gaols all Criminals convicted and
udged to ſuffer any Corporal Puniſhment, for ſo many
ys after Judgment given, hath been found burthenſome
Burghs, and others His Majeſty's Subjects, and a Diſ-
ıragement to the apprehending and puniſhing Offend-
, be it therefore enacted by the Authority aforeſaid,
ıat from and after the Twenty-fourth Day of *June*, One
ıuſand ſeven hundred and thirty, it ſhall and may be Of arbitrary puniſhments,
rful to and for all the ſaid Magiſtrates and Courts of
dicature to put in Execution any Judgment or Sentence,
porting any Corporal Puniſhment leſs than Death or on this ſide,
ſmembring, if given or pronounced in any Part of *Scot-*
d, to the Southward of the *Frith*, or River of *Forth*, on the other
er the elapſing of Eight Days, and if given or pro- ſide, Forth.

GEORGE II, 3, c. 32, —EXECUTION OF CRIMINAL SENTENCES.

nounced in any other Place, to the Northward of the ſaid *Frith*, or River of *Forth*, after the elapſing of Twelve Days, from and after the Date of ſuch Judgment or Sentence reſpectively.

PROVIDED always, That it ſhall and may be lawful to and for the Judges of the Court of Juſticiary, or any of them, who are hereby ſeverally authorized and required upon Application made, and a reaſonable Cauſe ſhewn to him or them, by any Perſon or Perſons, who ſhall find themſelves aggrieved by any ſuch Sentence or Judgment, given or pronounced by any Court of Regality, or other inferior Civil Magiſtrate, or Court of Judicature, to ſtay all Execution of ſuch Judgment or Sentence, for the Space of Thirty Days, to the End that ſuch Application may be made for Redreſs, as is agreeable to the Laws of that Part of *Great Britain* called *Scotland*.

Diſcretionary powers of any of the court of juſticiary.

No. XVI.

20 *GEORGE II, c.* 43.

Concerning Appeals from Inferior Courts to the Circuit Court of Juſticiary.

§ XXXV. AND to the end that the Juriſdiction of the Circuit Courts, in that Part of *Great Britain* called *Scotland*, may be rendered more uſeful and beneficial to His Majeſty's Subjects in that Part of the United Kingdom, be it further enacted by the Authority aforeſaid, That it ſhall and may be lawful to and for any Party or Parties conceiving himſelf or themſelves aggrieved by any Interlocutor, Decree, Sentence, or Judgment, of the Sheriff's or Stewart's Court of any County, Shire, or Stewartry, or of the Courts of any Royal Borough, or Burgh of Regality or Barony, or of any Court of any Baron, or other Heretor having ſuch Juriſdiction, as is not hereby abrogated or taken away, where ſuch Interlocutor, Decree, Sentence,

From what courts.

Judgment, ſhall be, concerning Matters Criminal, of what-ever Nature or Extent the ſame may be, except all Caſes which infer the Loſs of Life or Demembration, or in Matters Civil, where the Subject Matter of the Suit did not exceed in Value the Sum of Twelve Pounds *Sterling*, to complain and ſeek Relief againſt the ſame, by Appeal to the next Circuit Court of the Circuit wherein ſuch County, Shire, or Stewartry, Royal Borough, or Burgh of Regality or Barony, or ſuch Barony or Eſtate ſhall lie, ſo as no ſuch Appeal be competent before a final Decree, Sentence, or Judgment, pronounced; and ſuch Appeal, it ſhall be lawful for the Party conceiving himſelf aggrieved, to take and enter in open Court, at the Time of pronouncing ſuch Decree, Judgment, or Sentence, or at any Time thereafter, within Ten Days, by lodging the ſame in the Hands of the Clerk of Court, and ſerving the adverſe Party with a Duplicate thereof perſonally, or at his Dwelling-houſe, or his Procurator or Agent in the Cauſe, and ſerving in like Manner the Inferior Judge himſelf, in caſe the Appeal ſhall contain any Concluſion againſt him by Way of Cenſure or Reparation of Damages, for alleged wilful Injuſtice, Oppreſſion, or other Malverſation; and ſuch Service ſhall be ſufficient Summons to oblige the Reſpondents to attend and anſwer, at the next Circuit Court, which ſhall happen to be held Fifteen Days at leaſt after ſuch Service; and thereupon the Judge or Judges, at ſuch Circuit Court, ſhall and may proceed to cognoſce, hear, and determine, any ſuch Appeal or Complaint, by the like Rules of Law and Juſtice as the Court of Seſſion, or Court of Juſticiary reſpectively, may now cognoſce and determine in Suſpenſions of the Interlocutors, Decrees, Sentences, or Judgments, of ſuch Inferior Courts; but the ſaid Circuit Court ſhall proceed therein in a ſummary Way; and in caſe they ſhall find the Reaſons of any ſuch Appeal not to be relevant, or not inſtructed, or ſhall determine againſt the Party ſo complaining or appealing, the ſaid Judge or Judges ſhall condemn the Appellant or Complainer in ſuch Coſts as the Court ſhall think proper to be paid to the other Party, not exceeding the real Coſts *bona fide* expended by ſuch Party; and the Decree, Sen-

GEORGE II, 20, c. 43. —APPEALS TO THE CIRCUIT COURT.

In what cauſes.

Within what time.

Procedure ſummary.

Coſts.

GEORGE II, 20, c. 43. —APPEALS TO THE CIRCUIT COURT.

tence, or Judgment, of ſuch Circuit Court, in any of the Caſes aforeſaid, ſhall be final.

PROVIDED, That ſo much of this Act as relates to Appeals in Civil Cauſes to the Circuit Courts as aforeſaid, ſhall be in force for the ſpace of Ten Years, to be computed from the ſaid Twenty-fifth Day of *March*, and to the End of the then next Seſſion of Parliament, and no longer.

PROVIDED always, That wherever ſuch Appeal ſhall be brought, ſuch Complainer at the ſame time he enters his Appeal as aforeſaid, ſhall lodge in the Hands of the Clerk of Court, from which the Appeal is taken, a Bond, with a ſufficient Cautioner, for anſwering and abiding by the Judgment of the Circuit Court, and for paying the Coſts, if any ſhall be by that Court awarded; and the Clerk of Court ſhall be anſwerable for the Sufficiency of ſuch Cautioner.

Bond of caution.

PROVIDED always, and it is hereby enacted by the Authority aforeſaid, That in caſe ſuch Circuit Court ſhall, in cognoſcing or proceeding upon ſuch Appeal, find any ſuch Difficulty to ariſe, that by Means thereof ſuch Circuit Court cannot proceed to the Determination of the ſame, conſiſtently with Juſtice and the Nature of the Caſe; in any ſuch Caſe, and not otherwiſe, it ſhall and may be lawful to and for ſuch Circuit Court to certify ſuch Appeal, together with the Reaſons of ſuch Difficulty, and the Proceedings thereupon had before ſuch Circuit Court, to the Court of Seſſion, or Court of Juſticiary reſpectively; which Courts are hereby reſpectively authoriſed and required to proceed in, and determine the ſame.

No. XVII.

JAMES IV, Parl. 6, 1503, c. 98.

That no Schireffe nor Officiar, diſtreinzie or poind ony thing belangand to the Pleugh in time of Teilling.

ITEM, It is Statute and Ordained, That in time to cum na manner of Schireffe nor Officiar poynd nor diſtreinzie the Oxen, Horſe, nor uther Gudes perteining to the Pleugh, and that labouris the Ground, the time of the labouring the ſamen, quhair ony uther Gudes or Lande ar to be Apprized or Poinded according to the Common Law. Plough utenſils.

No. XVIII.

33 *GEORGE III, Chap.* 74.

Commonly called the Bankrupt Act, ſo far as relates to Arreſtments and Poindings.

§ III. AND be it enacted by the Authority aforeſaid, That when a Debtor is made Notour Bankrupt in Terms of the ſaid Act, made in the Year One thouſand ſix hundred and ninety-ſix, as now extended, all Arreſtments which ſhall have been uſed for attaching any Effects of ſuch Bankrupt within Sixty Days prior to the Bankruptcy, or within Four Calendar Months thereafter, ſhall be ranked *pari paſſu*, in the ſame manner as if ſuch Arreſtments had been of the ſame Date; and that, in Time coming, Letters or Precepts of Arreſtment, bearing to be upon a depending Action, may be granted ſummarily, upon Produc- *Pari paſſu* preference of arreſtments.

GEORGE III 33, c. 74. —BANKRUPT ACT.

tion of the libelled Summons, and it ſhall be no Objection to the *pari paſſu* Preference hereby eſtabliſhed, that the Summons upon which any Arreſtment proceeds was not executed, or that the Debt upon which it is founded was not liquidated at the Date of the Arreſtment: Providing always, that theſe and all other neceſſary Steps are afterwards taken without any undue Delay; and in caſe the Firſt or any ſubſequent Arreſter ſhall in the meantime have obtained a Decree of Forthcoming or Preference, and thereupon have recovered Payment, he ſhall nevertheleſs be accountable for the Sum recovered to thoſe who, by virtue of this Act, may be eventually found to have a *pari paſſu* Preference thereon, and ſhall be liable to an Action at their Inſtance, for Payment to them proportionally, after allowing out of the Fund the Expence of making it effectual: and further providing, that if there be any Arreſtments uſed for attaching the ſame Effects after the Period of Four Months ſubſequent to the Bankruptcy, ſuch Arreſtments ſhall not compete with thoſe uſed prior to the Period aforeſaid, but may rank with one another according to the former Law and Practice.

§ IV. AND be it enacted by the Authority aforeſaid, That an Arreſtment executed at the Market Croſs of *Edinburgh*, and Pier and Shore of *Leith*, to attach the Effects of the Debtor, as in the Hands of a Perſon out of *Scotland*, ſhall not be held to have interpelled ſuch Perſon from paying to the original Creditor, unleſs Proof be made that he, or thoſe having Authority to act for him, were previouſly in the Knowledge of ſuch Arreſtment having been ſo uſed.

Arreſtment at mercat croſs.

§ V. AND be it enacted by the Authority aforeſaid, That in future the Meſſenger, or other Officer employed in executing a Poinding for Debt, ſhall leave in the Hands of the Debtor a Schedule of the poinded Goods, and Note of the appraiſed Values, (One Appraiſement being in every Caſe ſufficient,) and ſhall forthwith report his Execution of Poinding to the Sheriff, or other Judge Ordinary, who ſhall give Directions for ſelling the Goods poinded by public Roup after ſuch Publication, and at ſuch Time and Place as Circumſtances may require, any Perſon who intromits with or carries off the Goods in the meantime in order to diſappoint the Poinding, being liable in Dou[ble]

Poinded goods to be ſold by roup.

the appraiſed Value thereof; and the nett Sum ariſing from the Sale, after Deduction of all Charges, or the Goods, in caſe no Offerers appear, ſhall be delivered over to the Poinding Creditor, a Note or Minute of the Tranſaction being kept by the Clerk, to be made patent to all concerned, for a Fee of One Shilling. GEORGE III 33. c. 74. —BANKRUPT ACT.

§ VI. AND be it enacted by the Authority aforeſaid, That when a Perſon has been rendered Notour Bankrupt as aforeſaid, no Poinding of the Moveables belonging to ſuch Bankrupt uſed within Sixty Days before the Bankruptcy, or within Four Calendar Months thereafter, ſhall give a Preference to ſuch Poinder, but that every other Creditor of the Bankrupt, having liquidated Grounds of Debt, or Decrees for Payment, and ſummoning ſuch Poinder before the ſaid Four Months are elapſed, ſhall be entitled to a proportional Share of the Price of the Goods ſo poinded effeiring to his Debt, deducting always the Expence of ſuch Poinding, together with Ten *per Centum* more on the ſaid Price or appraiſed Value, which the Poinder ſhall retain to Account of his Debt in Preference to the other Creditors, the ſaid Debt being thereby ſo far diminiſhed in the Competition with them: And providing alſo, that all Poindings after the Four Months ſhall have ſuch Preference as they were entitled to by former Law and Practice, ſaving always the Landlord's Right of Hypothec for Rents, or any other Hypothec known in Law, which ſhall be nowiſe hurt or impaired by any Thing contained in this Act: And provided alſo, that in the Caſe of a Sequeſtration under this Act, the *pari paſſu* Preference of Arreſtments and Poindings ſhall be regulated as herein after directed. *Pari paſſu* preference of poindings.

No. XIX.

1 GEORGE I, c. 5.

An Act for Preventing Tumults and Riotous Aſſemblies, and for the more ſpeedy and effectual Puniſhing the Rioters.

Preamble. §I. WHEREAS of late many Rebellious Riots and Tumults have been in divers Parts of this Kingdom, to the Diſturbance of the Public Peace, and Endangering of His Majeſties Perſon and Government, and the ſame are yet continued and fomented by Perſons Diſaffected to His Majeſty, preſuming ſo to do, for that the Puniſhments provided by the Laws now in being are not adequate to ſuch Heinous Offences; and by ſuch Rioters His Majeſty and His Adminiſtration have been moſt Maliciouſly and Falſly traduced, with an Intent to raiſe Diviſions, and to Alienate the Affections of the People from His Majeſty: Therefore, for the Preventing and Suppreſſing of ſuch Riots and Tumults, and for the more ſpeedy and effectual Puniſhing the Offenders therein, Be it Enacted by the Kings moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and of the Commons in this preſent Parliament Aſſembled, and by the Authority of the ſame, That if any Perſons, to the Number of Twelve or more, being Unlawfully, Riotouſly, and Tumultouſly Aſſembled together, to the Diſturbance of the Public Peace, at any time after the laſt Day of *July*, in the Year of our Lord One thouſand ſeven hundred and fifteen, and being Required or Commanded by any one or more Juſtice or Juſtices of the Peace, or by Magiſtrates the Sheriff of the County or his Under-Sheriff, or by the Mayor, Bailiff, or Bailiffs, or other Head Officer, or Juſtice of the Peace of any City or Town-Corporate, where ſuch Aſſembly ſhall be, by Proclamation to be made the Kings Name, in the Form herein after directed,

perſe themſelves, and Peaceably to depart to their Ha- GEORGE I, ations, or to their Lawful Buſineſs, ſhall, to the Num- I, C. 5, of Twelve or more (notwithſtanding ſuch Proclama- PUBLIC PEACE n made) Unlawfully, Riotouſly, and Tumultuouſly re- —RIOT in or continue together by the ſpace of One Hour af- ACT. ſuch Command or Requeſt made by Proclamation, at then ſuch continuing together to the Number of Twelve or more, after ſuch Command or Requeſt made Proclamation, ſhall be adjudged Felony without Benefit Clergy, and the Offenders therein ſhall be adjudged Fe- s, and ſhall ſuffer Death as in caſe of Felony without nefit of Clergy.

Twelve continuing together one hour after proclamation.

II. AND be it further Enacted by the Authority aforeſaid, at the Order and Form of the Proclamations that ſhall made by the Authority of this Act, ſhall be as here- r followeth (that is to ſay) The Juſtice of the Peace, other Perſon Authorized by this Act to make the ſaid clamation, ſhall, among the ſaid Rioters, or as near to m as he can ſafely come, with a loud Voice Command, cauſe to be Commanded Silence to be, while Proclama- n is making, and after that, ſhall openly and with loud ice make, or cauſe to be made, Proclamation in theſe rds, or like in effect:

Form of the proclamation.

OUR Sovereign Lord the King Chargeth and Commandeth Perſons, being Aſſembled, immediately to diſperſe themes, and Peaceably to depart to their Habitations, or to ir Lawful Buſineſs, upon the Pains contained in the Act de in the Firſt Year of King George, *for Preventing Tuults and Riotous Aſſemblies.*

God Save the King.

III. AND every ſuch Juſtice and Juſtices of the Peace, riff, Under-Sheriff, Mayor, Bailiff, and other Head-Of- r aforeſaid, within the Limits of their reſpective Juriſtions, are hereby Authorized, Impowered, and Requir- on Notice or Knowledge of any ſuch Unlawful, Riot- s, and Tumultuous Aſſembly, to reſort to the Place ere ſuch Unlawful, Riotous, and Tumultuous, Aſſem- ſhall be, of Perſons to the Number of Twelve or more, l there to make, or cauſe to be made, Proclamation in nner aforeſaid.

GEORGE I, 1, C. 5, PUBLIC PEACE —RIOT ACT.

§ IV. AND be it further Enacted by the Authority aforeſaid, That if ſuch Perſons, ſo Unlawfully, Riotouſly, and Tumultouſly Aſſembled, or Twelve or more of them, after Proclamation made in manner aforeſaid, ſhall continue together, and not diſperſe themſelves within One Hour, That then it ſhall and may be Lawful to and for every Juſtice of the Peace, Sheriff, or Under-Sheriff of the County, where ſuch Aſſembly ſhall be, and alſo to and for every High or Petty Conſtable, and other Peace Officer within ſuch County, and alſo to and for every Mayor, Juſtice of the Peace, Sheriff, Bailiff, and other Head-Officer, High or Petty Conſtable, and other Peace-Officer of any City or Town-Corporate where ſuch Aſſembly ſhall be, and to and for ſuch other Perſon and Perſons as ſhall be Commanded to be Aſſiſting unto any ſuch Juſtice of the Peace, Sheriff, or Under-Sheriff, Mayor, Bailiff, or other Head-Officer aforeſaid, (who are hereby Authorized and Impowered to Command all His Majeſties Subjects of Age and Ability to be Aſſiſting to them therein) to Seize and Apprehend, and they are hereby Required to Seize and Apprehend ſuch Perſons ſo Unlawfully, Riotouſly, and Tumultouſly continuing together after Proclamation made, as aforeſaid, and forthwith to Carry the Perſons ſo Apprehended before One or more of His Majeſty's Juſtices of the Peace of the County or Place where ſuch Perſons ſhall be ſo Apprehended, in Order to their being proceeded againſt for ſuch their Offences according to Law; And that if the Perſons ſo Unlawfully, Riotouſly, and Tumultouſly Aſſembled, or any of them, ſhall happen to be Killed, Maimed, or Hurt, in the Diſperſing, Seizing, or Apprehending, or Endeavouring to Diſperſe, Seize, or Apprehend them, by reaſon of their Reſiſting the Perſons ſo Diſperſing, Seizing, or Apprehending, or Endeavouring to Diſperſe, Seize, or Apprehend them, that then every ſuch Juſtice of the Peace, Sheriff, Under-Sheriff, Mayor, Bailiff, Head-Officer, High or Petty Conſtable, or other Peace-Officer, and all and ſingular Perſons, being Aiding and Aſſiſting to them, or any of them, ſhall be Free, Diſcharged, and Indemnified, as well againſt the King's Majeſty, His Heirs and Succeſſors, as againſt all and every other Perſon and Perſons, of, for, or concerning the

Arreſt of perſons remaining aſſembled.

Indemnity in caſe of killing any of the rioters.

Killing, Maiming, or Hurting, of any ſuch Perſon or Perſons, ſo Unlawfully, Riotouſly, and Tumultuouſly Aſſembled, that ſhall happen to be ſo Killed, Maimed, or Hurt, as aforeſaid. GEORGE I, C. 5. PUBLIC PEACE —RIOT ACT.

§ V. And be it further Enacted by the Authority aforeſaid, That if any Perſons Unlawfully, Riotouſly, and Tumultuouſly Aſſembled together, to the Diſturbance of the Public Peace, ſhall Unlawfully and with Force Demoliſh, or Pull down, or begin to Demoliſh, or Pull down any Church or Chapel, or any Building for Religious Worſhip, Certified and Regiſtered according to the Statute made in the Firſt Year of the Reign of the late King *William* and Queen *Mary*, Intituled, *An Act for Exempting their Majeſties Proteſtant Subjects Diſſenting from the Church of* England, *from the Penalties of certain Laws*, or any Dwelling-Houſe, Barn, Stable, or other Out-Houſe, That then every ſuch Demoliſhing, or Pulling down, or beginning to Demoliſh, or Pull down, ſhall be adjudged Felony without Benefit of Clergy, and the Offenders therein ſhall be adjudged Felons, and ſhall ſuffer Death as in caſe of Felony, without Benefit of Clergy. Demoliſhing churches, &c.

§ VI. Provided always, and be it further Enacted by the Authority aforeſaid, That if any Perſon or Perſons do, or ſhall, with Force and Arms, wilfully and knowingly Oppoſe, Obſtruct, or in any manner wilfully and knowingly Lett, Hinder, or Hurt any Perſon or Perſons that ſhall begin to Proclaim, or go to Proclaim, according to the Proclamation hereby directed to be made, whereby ſuch Proclamation ſhall not be made, That then every ſuch Oppoſing, Obſtructing, Letting, Hindering, or Hurting, ſuch Perſon or Perſons, ſo beginning, or going to make, ſuch Proclamation, as aforeſaid, ſhall be Adjudged Felony, without Benefit of Clergy, and the Offenders therein ſhall be adjudged Felons, and ſhall ſuffer Death as in caſe of Felony, without Benefit of Clergy; and that alſo every ſuch Perſon and Perſons ſo being Unlawfully, Riotouſly, and Tumultuouſly Aſſembled, to the Number of Twelve, as aforeſaid, or more, to whom Proclamation ſhould or ought to have been made, if the ſame had not been hindered, as aforeſaid, ſhall likewiſe, in caſe they, or any of them, to the number of Twelve, or more, ſhall continue Obſtructing the reading of the proclamation.

GEORGE I, I, C. 5, PUBLIC PEACE —RIOT ACT.

together, and not diſperſe themſelves within One Hour, after ſuch Lett or Hinderance ſo made, having knowledge of ſuch Lett or Hinderance ſo made, ſhall be adjudged Felons, and ſhall ſuffer Death as in caſe of Felony, without Benefit of Clergy.

Reparation of the damage.

§ VII. AND be it further Enacted by the Authority aforeſaid, That if, after the ſaid laſt Day of *July* One thouſand ſeven hundred and fifteen, any ſuch Church or Chapel, or any ſuch Building for Religious Worſhip, or any ſuch Dwelling-Houſe, Barn, Stable, or other Out-Houſe, ſhall be Demoliſhed, or Pulled down wholly, or in part, by any Perſons ſo Unlawfully, Riotouſly, and Tumultuouſly Aſſembled, That then, in caſe ſuch Church, Chapel, Building for Religious Worſhip, Dwelling-Houſe, Barn, Stable, or Out-Houſe, ſhall be out of any City or Town, that is, either a County of itſelf, or is not within any Hundred, That then the Inhabitants of the Hundred, in which ſuch Damage ſhall be done, ſhall be liable to yield Damages to the Perſon or Perſons Injured and Damnified by ſuch Demoliſhing or Pulling down wholly, or in part; and ſuch Damages ſhall and may be Recovered by Action, to be brought in any of His Majeſties Courts of Record at *Weſtminſter*, (wherein no Eſſoign, Protection, or Wager of Law, or any Imparlance, ſhall be allowed) by the Perſon or Perſons Damnified thereby, againſt any Two or more of the Inhabitants of ſuch Hundred, ſuch Action for Damages to any Church or Chapel to be brought in the Name of the Rector, Vicar, or Curate, of ſuch Church or Chapel that ſhall be ſo Damnified, in Truſt, for applying the Damages to be Recovered in Rebuilding or Repairing ſuch Church or Chapel; and that Judgment being given for the Plaintiff or Plaintiffs in ſuch Action, the Damages ſo to be Recovered ſhall, at the Requeſt of ſuch Plaintiff or Plaintiffs, his or their Executors or Adminiſtrators, be Raiſed and Levied on the Inhabitants of ſuch Hundred, and paid to ſuch Plaintiff or Plaintiffs, in ſuch Manner and Form, and by ſuch Ways and Means, as are Provided by the Statute made in the Seven-and-twentieth Year of the Reign of Queen *Elizabeth*, for Reimburſing the Perſon or Perſons on whom any Money Recovered againſt any Hundred by any Party Robbed, ſhall be Le-

If out of any city, &c.

: And in Caſe any ſuch Church, Chapel, Building for gious Worſhip, Dwelling-houſe, Barn, Stable, or Out- ſe, ſo Damnified, ſhall be in any City or Town that is ar a County of itſelf, or is not within any Hundred, then ſuch Damages ſhall and may be Recovered by ion to be brought in manner aforeſaid (wherein no Eſ- n, Protection, or Wager of Law, or any Imparlance, be allowed) againſt Two or more Inhabitants of ſuch or Town; and Judgment being given for the Plaint- or Plaintiffs in ſuch Action, the Damages ſo to be Re- red ſhall, at the Requeſt of ſuch Plaintiff or Plaintiffs, or their Executors or Adminiſtrators, made to the Juſ- of the Peace of ſuch City or Town at any Quarter- ons to be holden for the ſaid City or Town, be Raiſ- nd Levied on the Inhabitants of ſuch City or Town, Paid to ſuch Plaintiff or Plaintiffs, in ſuch Manner Form, and by ſuch Ways and Means, as are Provided he ſaid Statute made in the Seven-and-twentieth Year he Reign of Queen *Elizabeth*, for Reimburſing the on or Perſons on whom any Money Recovered againſt Hundred by any Party Robbed, ſhall be Levied.

GEORGE 1, I. C. 3, PUBLIC PEACE —RIOT ACT.

If within a city, &c.

VIII. AND be it further Enacted by the Authority ſaid, That this Act ſhall be openly Read at every rter-Seſſions, and at every Leet or Law-Day.

Act to be read.

IX. PROVIDED always, That no Perſon or Perſons be Proſecuted by Virtue of this Act for any Offence ffences Committed contrary to the ſame, unleſs ſuch ecution be Commenced within Twelve Months after Offence Committed.

Limitation to three years.

X. AND be it further Enacted by the Authority ſaid, That the Sheriffs and their Deputies, Stewarts their Deputies, Bailies of Regalities and their Depu- Magiſtrates of Royal Boroughs, and all other Infe- Judges and Magiſtrates, and alſo all High or Petty ſtables, or other Peace-Officers of any County, Stew- y, City, or Town, within that Part of *Great Britain* d *Scotland*, ſhall have the ſame Powers and Authority putting this preſent Act in Execution within *Scotland*, he Juſtices of the Peace and other Magiſtrates afore- reſpectively have by Virtue of this Act, within and the other Parts of this Kingdom; and that all and

Scottiſh magiſtrates.

GEORGE I, 1, c. 5, PUBLIC PEACE —RIOT ACT.

every Perſon and Perſons who ſhall at any time be Convicted of any the Offences afore-mentioned, within that Part of *Great Britain* called *Scotland*, ſhall for every ſuch Offence Incur and Suffer the Pain of Death, and Confiſcation of Moveables: And alſo, That all Proſecutions for Repairing the Damages of any Church or Chapel, or any Building for Religious Worſhip, or any Dwelling-Houſe, Barn, Stable, or Out-Houſe, which ſhall be Demoliſhed or Pulled down in whole, or in part, within *Scotland*, by any Perſons Unlawfully, Riotouſly, or Tumultouſly Aſſembled, ſhall and may be Recovered by Summar Action, at the Inſtance of the Party Aggrieved, his or her Heirs or Executors, againſt the County, Stewartry, City, or Borough reſpectively, where ſuch Diſorders ſhall happen, the Magiſtrates being Summoned in the Ordinary Form, and the ſeveral Counties and Stewartries called by Edictal Citation at the Market Croſs of the Head Borough of ſuch County or Stewartry reſpectively, and that in general, without mentioning their Names and Deſignations.

Damage, how reparation is obtained in Scotland.

§ XI. PROVIDED, and it is hereby Declared, That this Act ſhall extend to all Places for Religious Worſhip, in that Part of *Great Britain* called *Scotland*, which are Tolerated by Law, and where His Majeſty King *George*, the Prince and Princeſs of *Wales*, and their Iſſue, are Prayed for in Expreſs Words.

Scottiſh places of worſhip.

No. XX.

JAMES VI, Parl. 16, 1600, *c.* 12.

Anent ſingular Combats.

Duells.

OUR SOVERAINE LORDE, and Eſtaites of this preſent Parliament, conſidering the great liberty that ſundry perſons takes in provoking of others to ſingular combats, upon ſuddaine and frivole quarrels whilk hes engendered great inconvenients within this Realme.

refore, ſtatutes and ordaines, that no perſon in tyme ng, without his Heighnes licence fight any ſingular ; under the paine of death, and his movable geare to his Heighnes uſe. And the provoker to be pu- with a more ignominious death nor the defender, at aſure of his Majeſty. JAMES VI, 16, c. 12, PUBLIC PEACE —DUELLS.

No. XXI.

WILLIAM, Parl. 1, 1696, *c.* 35.

Act againſt Duells.

Soveraign Lord, with Advice and Conſent of the of Parliament, *Statutes and Enacts*, That whoſo- rincipal or Second, or other interpoſed Perſon, gives lenge to Fight a Duell, or ſingle Combat, or who- accepts the ſame, or whoſoever either Principal or on either ſide ingages therein, albeit no Fighting ſhall be puniſhed by the pain of Baniſhment, and t of Moveables, without prejudice to the Act al- nade againſt the Fighting of Duells; Which His y with Conſent foreſaid hereby Ratifies and Con-

No. XXII.

JAMES I, Parl. 1, 1424, *c.* 2.

Peace ſuld be keeped within the Realm.

d, That firme & ſicker peace be keeped and halden all the Realme, and amang all and ſundrie Lieges bjectes, to our Soveraine Lord the King, and that ı take on hand in time to cum, to moove or make

JAMES I, I, c. 2, PUBLIC PEACE.

weir againſt uther, under all paine that may follow be courſe of commoun law.

No. XXIII.

JAMES I, Parl. 9, 1429, *c.* 129.

Of ſovertie aſked be onie partie of uthers.

Taking ſurety againſt perſonal danger.

ITEM, It is ſtatute and ordained, that gif onie of the Kingis lieges hes ony doubt of the life, outher be deed or mannance, or violent preſumption, and he aſk ſovertie of partie, that the plaint is maid upon, ſa that the partie plantife mak pruif of the deed, or mannance, or of the violent preſumption maid or done till him be his aith, or uther ſufficient pruife, and the Schireffe do not that effeiris till his office in that caſe, he fall be in fourtie pund to the King, and aſſyith the partie.

No. XXIV.

JAMES II, Parl. 6, 1449, *c.* 13.

The Proclamation of general peace: Of law-burrows: Of miniſters of Law.

Lawburrows.

ITEM, It is ordained, that general peape be proclaymed and keiped out-throw all the Realme, that all men may travel ſurelie & ſickerlie in merchandice, & utherwaies in all places throw the land, ſwa that na man neede till have aſſurance ane of uther, bot that the Kingis peace be aſſurance till all men. And quha that offendis therein, to be puniſhed by the King or his Officiares. And that the King make ſik Officiares, that can weill & may weill puniſh ſik treſpaſſours. And attour, gif ony perſon dreadis

ne uther, that he paſſe to the Schireffe, or to the Offi- JAMES I, iares, that it effeiris to, and make that knawn, or ſweare 6, c. 13, hat he dreadis him, and they ſall take borrowes of peace, PUBLIC PEACE. fter the actes maid thereupon of before. And that juſt ıen be maid Juſtices, that kennis the Lawe, and that will ıiniſter eavenlie, alſweill of the greate, as of the ſmall. ınd right ſwa of uther officiares. And gif they be neligent to miniſter their officer, that they be puniſhed be ıe King. And that the juſtice paſſe twiſe throw the ountrie in the zeir, after the auld lawes.

No. XXV.

JAMES IV, Parl. 3, 1491, *c.* 27.

Anent finding of Law-borrowes.

ITEM, It is adviſed, ſtatute, and ordained, for the eſchew- ſ of ſlauchter fore-thought fellonie, and debait, that ſall ppen betuixt onie perſons in time to cum, be complaint ıid to our Soveraine Lord, his Chancellar, or Juſtice, ıt the Chancellar or Preſident beand for the time, with riſe of the Councel and Juſtice, with adviſe of his Aſſoures, ſall put-quhat paine of ſumme of money, that ey think expedient, the parties and their actiones beand ıfiddered, that the partie compleinzieand ſall be harme- and ſkaithles in his perſon or gudes, but fraude or ile utherwaies then law will. And quhat Judge or dges that takis this ſovertie, that they act the ſamin, or it in remembrance in their buik, that it may be ſchawin our Soveraine Lord and his Councel, and ſiklike paines be put in ſlauchter, rebellion, and uther crimes.

No. XXVI.

JAMES VI, Parl. 7, 1581, c. 117.

The Forme and Paine of Law-borrowes.

PUBLIC PEACE.

FORSAMEIKLE, as ſindrie gude Actes hes bene maid anent finding of Law borrowes, for preſervation of the trewe and obedient Subjectes from injuſt force and violence; and laitlie for their greater comfort, it was weill ordained, that the paines of Law-borrowes ſuld be divided betwixt the King and the Pairtie offended unto. Nevertheleſſe, ſeeing the paines of Law-borrowes hes extended only in time bygane, for ſafetie of bodielie harme from the perſon of the compleener: the malice of the wicked ſa increaſſis, as they ceaſe not be indirect meanes, and hounding out of Limmars, Vagaboundes, and uthers not reſponſal, to invade the innocent perſones, not onlie in their bodies, bot to rieve, ſteale, houch, or ſlay, their Oxen, Horſes, and uther Cattel, cut or deſtroy their Cornes, or to cauſe eate the ſame with Beſtial; to hound and ſlay their ſcheepe with dogges, boaſt themſelves in ſik ſorte, as they dare not lie in their awin Houſes, or to minace their ſervandes to lieve their ſervice, quhairthrow their ground may be layed waiſt, to the utter wrack and depauperating of the Innocentes.

Lawburrows,

QUHAIRFOIR, our Soveraine Lord, with adviſe of his Three Eſtaites in this preſent Parliament, Ordainis, That all Letters of Law-borrowes ſall be direct in time cumming, at the inſtance of the pairties compleenand, Chairgeing the perſones compleened upon to finde ſicker ſovertie and Law-borrowes, that the compleeners, their wives, bairnes, tennentes, and ſervandes, ſall be harmeles and ſkaithleſs in their bodies, Landes, Takkes, Poſſeſſiones, Gudes, and Geare, and on na wayes to be moleſted or troubled theirin, be the perſones compleened upon, nor na uthers of their cauſing, ſending, hounding-out, receipting,

to other than bodily harm.

ommand, aſſiſtance, and rati-habitation, quhome they may oppe or let directlie or indirectlie. utherwayes nor be our of Law and Juſtice, under great paines, to be modied be the Lordes of Seſſion, or uthers ordinar Judges; be uhome, in caſe the ſaid Law-burrowes ſall be dewlie tryed be broken, the ane halfe of the paine ſall perteine to ur Soveraine Lord, and the uther halfe to the pairtie rieved, according to the effect and meaning of the ſaid ct, maid to that effect of befoir. JAMES VI, 1581, c. 117 PUBLIC PEACE.

No. XXVII.

JAMES VI, Parl. 13, 1593, *c.* 170.

Additiones to the Paines of Law-borrowes.

IT is ſtatute and ordained, be Our Soveraine Lord, and Three Eſtaites, that in time cumming the paines and lawes of Law-burrowes, or for none-again-bringing of ters to the Juſtice Clerke and his deputes: or for nonenpeirance before the Juſtice after ſoverty found, ſall bee, every Erle or Lorde, twa thouſand pundes: For every eat Baronne, ane thouſand pundes: For every Free-haldane thouſand Markes: For every Fewer, five hundreth arkes: For every Zeaman-man, ane hundreth Markes: r every Gentle-man-un-landed, twa hundreth Markes: ilk perſon ſummoned to paſs upon aſſiſe before the Juſe, ane hundreth Markes: And that the Juſtice Clerke d his deputes receive ſovertie according to the ſaidis ines in time cumming, and na uther-ways, as they will ſwere upon the dewtie and execution of their offices. nd the ſaids paines of Law-borrowes to be divided equalr betwixt the King and the partie offended unto, conforme the act maid upon of before; and that the un-law of all erſones arreiſted, and not compeirand at the firſt Juſtice ire, over all the Realme in time cumming, ſall be twenty undes. Pains of lawburrows. Freeholder, Fewer, Zeaman-man, Gentle-man-un-landed.

No. XXVIII.

JAMES VI, Parl. 15, 1597, *c.* 273.

The Pains of Law-burrows ſuld be payed be him quha for his diſobedience is denunced Rebell: the Cautioner may be perſewed, or the Principal.

PUBLIC PEACE. OUR Soveraine Lorde, and Eſtates of Parliament, ſtatuts and ordains, that the paines of contravention ſall be payed be the principal party that is charged to find Law-burrows, albeit he paſſe to the horne, and find not caution: and gif he find caution, that baith he as principal, and als his cautioner ſall be ſubject to the payment thereof, at the option of the perſewer, as in all uther pecunial obligations.

No. XXIX.

WILLIAM, Parl. 1, 1701, *c.* 6.

An Act for preventing wrongous Impriſonment, and againſt undue Delays in Tryals.

Preamble. OUR SOVERAIGN LORD conſidering it is the Intereſt of all his good Subjects, that the Liberty of their perſons be duely ſecured; and that it is Declared by the *Claim of Right*, That the Impriſonment of perſons, without expreſſing the Reaſons thereof, and delaying to put them to Tryal, is contrair to Law: *Therefore* His Majeſty, with Advice and Conſent of the Eſtates of Parliament, Statutes, Enacts, and Ordains, that all Informers ſhall Sign their Informations, and that no Perſon ſhall hereafter be impriſoned for Cuſtody, in Order to Tryal, for any Crime or

I, Requiſites to a legal impriſonment.

ſence, without a Warrand in Writ, expreſſing the particular Cauſe for which he is impriſoned; and of which Warrand the Meſſenger, or Executer thereof, before Impriſonment, or the Keeper of the Priſon receiving the ſame, is hereby Ordained to give a juſt Double immediately, under his Hand, to the Priſoner himſelf, for the end after-ſpecified: Declaring, That all Warrands for Impriſonment, on the Account foreſaid, either proceeding upon Informations not ſubſcribed, or not expreſſing the particular Cauſe, ſhall be void and null, and the Judge, or Officiar of the Law, and all others whatſomever ſubſcribing the ſame, and the Executor, or Keeper of the Priſon, who ſhall receive and detain the Perſon ſo wrongouſly Ordered to be Impriſoned, or refuſing a Double as ſaid is, ſhall be lyable in the Puniſhment of wrongous Impriſonment, hereafter expreſt. And to the effect that Perſons, who are, or ſhall be, Impriſoned for Cuſtody, in order to Tryal, may not be wrongouſly delayed and detained, His Majeſty, with Advice and Conſent foreſaid, *Statutes and Ordains*, that all Crimes, not inferring Capital Puniſhment, ſhall be Bailable: And for clearing and eſtabliſhing the Method of finding Bail in ſuch Caſes, either before or after Impriſonment, His Majeſty, with Advice and Conſent foreſaid, *Statutes and Ordains*, That it ſhall be lawful to the Priſoner, or Perſon ordered to be Impriſoned, to apply to the Committer or Commiſſioners of Juſticiary, or other Judge competent for Cognition of the Crime, and offer to find ſufficient Caution, that he the ſaid Priſoner or Perſon ordered to be Impriſoned, ſhall appear and anſwer to any Libel that ſhall be offered againſt him, for the Crime or Offence wherewith he is charged, or at any time within the ſpace of ſix Moneths, and that under ſuch a Penalty as the ſaid Committer, or the Lords of Juſticiary, or other Judge competent, ſhall modifie and appoint; and that upon the ſaid Application, the ſaid Committer, or Lords of Juſticiary, or other Judge competent, ſhall firſt Cognoſce, whether the Crime be Capital or not, in order to the finding Bail allenarly; and if found Bailable, then he or they ſhall be obliged to modifie the Sum for which the Bail is to be found, within twenty-four Hours after the ſaid Petition is preſented to him or them reſpectively, the Sum

WILL. P. 1, 170[illegible] c. 6, — LEGAL COMMITMENT.

Signed information,

expreſſing the cauſe.

Penalty.

II, Baill.

Crimes bailable.

Application.

To whom?

What caution.

Duty of the judge.

24 hours for modifying.

WILL. P. I, 1701, c. 6, —BAIL.

for which the Bail is to be found, not exceeding ſix thouſand Merks for a Nobleman, three thouſand Merks for a Landed Gentleman, one thouſand Merks for any other Gentleman and Burgeſs, and three hundred Merks for any other inferior Perſon, under the Pain of wrongous Impriſonment, and upon the Parties finding ſufficient Bail, under the Penalty modified at the ſight of the ſaid Judge or Judicatory *reſpective;* and Delivering, or Offering the ſame to the Clerk, and Inſtruments taken upon the Delivery, or Offer, of ſufficient Caution, the ſaid Committer, or Judicatory competent, ſhall order his Liberation, or diſcharge his Impriſonment, if not incarcerat, under the Penalty of wrongous Impriſonment; as likewiſe that ſufficient Bail, under the Penalty modified, being offered to the Judge or Magiſtrat, to whom the Execution of the Warrand is directed: The ſaid Judge or Magiſtrat ſhall be obliged, and is hereby Appointed and Ordained to accept of the foreſaid Bail, and ſet the Priſoner at Liberty, under the like Penalty of wrongous Impriſonment. And His Majeſty, with Advice and Conſent foreſaid, farder *Statutes and Ordains*, that, upon Application of any Priſoner for Cuſtody in order to Trial, whether for Capital or Bailable Crimes, to any of the Lords of Juſticiary, or other Judge or Judicatory competent for Judging the Crime or Offence for which he is impriſoned; and the ſaid Priſoner his producing the ſaid Double of the Warrand of his Impriſonment under the Keeper's Hand, the ſaid Judge or Judicatory competent, under the Pain of wrongous Impriſonment, are hereby Ordained, within twenty-four Hours after the ſaid Application and Petition is preſented to him or them, to give out Letters or Precepts, direct to Meſſengers, for intimating to his Majeſties Advocat or Procurator-fiſcal, and Party appearing by the Warrand to be concerned, if any be within the Kingdom, to fix a Dyet for the Tryal within ſixty Days after the Intimation; Certifying his Majeſties Advocat or Procurator-fiſcal, and the ſaid Party concerned, that if they failzie the Priſoner ſhall be Diſcharged and ſet at Liberty without delay; for doing whereof, the ſaid Judge or Judicatory competent, are hereby expreſly Warranted, and ſtrictly Required and Ordained, to do the ſame under th—

Quantum.

Pains.

III, Forcing on the trial.

Application.

To whom?

Precepts.

Within 24 hours.

Diet to be fixed.

60 days.

If they neglect?

Penalty foreſaid, unleſs the Delay be upon the Priſoner's Petition or Deſire; and the Dyet of the Tryal being prefixed, the Magiſtrats of the Place, or Keeper of the Priſon, ſhall then be obliged to deliver the Priſoner to a ſufficient Guard, to be provided by the Judge, his Majeſty's Advocat, or Procurator-fiſcal, that the Priſoner may be ſiſted before the Judge competent, and His Majeſty's Advocat or Procurator-fiſcal, ſhall inſiſt in the Libel, and the Judge put the ſame to a Tryal, and the ſame ſhall be determined by a final Sentence within fourty Days, if before the Lords of Juſticiary, and thirty Days if before any other Judge; and if his Majeſty's Advocat or Procurator-fiſcal do not inſiſt in the Tryal at the Day appointed, and proſecute the ſame to the Concluſion as foreſaid, His Majeſty, with Advice foreſaid, *Statutes and Ordains*, that the Dyet ſhall then be *ſimpliciter* deſerted, and the Priſoner immediately liberat from his Impriſonment for that Crime or Offence; and if no Proceſs be raiſed and execute within the time allowed, or in caſe of not inſiſting at the Dyet, and bringing the Proceſs to a Concluſion within the foreſaid Space, it ſhall be lawful to the Priſoner to apply to the Juſtice-General, Juſtice-Clerk, or any of the Lords of Juſticiary, or Judge competent reſpective; and upon his Application, and inſtructing that the limited time by Law for inſiſting or concluding the Proceſs is elapſed, and Inſtruments taken thereupon, the ſaid Juſtice-General, Juſtice-Clerk, Lords of Juſticiary, and Judge competent, ſhall be obliged, within twenty-four Hours, to iſſue out Letters or Precepts direct to Meſſengers, for charging the Magiſtrats, or Keepers of the Priſon where the Priſoner is detained, for ſetting him at Liberty, under the Penalty of wrongous Impriſonment in caſe of Delay or Refuſal, to grant the ſaid Letters or Precepts, or to ſet him at Liberty after the Charge, without prejudice to the Keeper of the Priſon, as to his Dues in all caſes of Liberation as formerly before the making of this Act; and the Priſoner being liberat in manner foreſaid, it ſhall not be lawful to put or detain him in Priſon for the ſame Crime, under the Penalty of wrongous Impriſonment, in caſe his former Liberation be made known to the Committer before the Warraud be granted, or in

WILL. P. 1, 1701. c. 6, —FORCING ON THE TRIAL.

Trial finiſhed.

Within 40 days.

30 days.

If the trial is not inſiſted in,

or no proceſs.

Application to the judge.

Precepts within 24 hours.

Dues excepted.

WILL. P. 1, 1701, c. 6, —FORCING ON THE TRIAL.

case he be detained after his former Imprisonment is sufficiently instructed to the Keeper of the Prison, who, upon Production of the former Warrand of his Liberation from his Imprisonment for the same Crime, shall be obliged to set the Prisoner furthwith at Liberty, unless there be new Criminal Letters raised before the Commissioners of Justiciary, and duely execute against the said Prisoner: In which case, it is hereby declared lawful to Imprison him of new, though the saids Letters be raised for the same Crime for which he was formerly Incarcerat, and it shall be lawful to apprehend and secure him at the time of executing the saids Letters, or at any time thereafter before Tryal, and to detain him till his Tryal, or that he be set at Liberty in the due Course of Law: And His Majesty, with Advice and Consent foresaid, Ordains His Majesty's Advocat to insist in the said Lybel, and prosecute the same to a final Sentence, within fourty Days after the said Prisoner is of new Incarcerat thereupon, unless the Delay be upon the Application or at the Desire of the Prisoner; wherein, if the Kings Advocat failzie, the Dyet is to be deserted *simpliciter*, and the Prisoner ordained to be set at Liberty from the said Imprisonment: And the Process not being duely prosecute as aforesaid, and the Dyet thereupon deserted, His Majesty, with Advice and Consent foresaid, Declares the Party Imprisoned a second time as aforesaid, to be for ever free from all Question or Process for the foresaid Crime or Offence; Providing always, That, in case of Imprisonment for Treason, the Prisoner shall not have Access to apply for prefixing of a Dyet for Process for fourty days after his Imprisonment, which are hereby allowed for preparing of the Process, after elapsing of which time, the Lords of His Majesties Privy Council, or Lords of Justiciary, or any of them, are hereby required, upon the Application of the Prisoner, to issue furth Precepts as in other Cases: And in case of not insisting, or prosecuting the Process as aforesaid, the Prisoner shall be liberat upon sufficient Bail, to compear at any time, when called, within twelve Months, for his good and peaceable Behaviour, in the mean time, the said Baill not exceeding the double of the Baill in other Crimes; Declaring, That the Liberation provided by this present Act,

Set at liberty.

Except in one case.

Imprisonment anew.

Final sentence within 40 days.

Dyet deserted,

for ever free.

IV, Exceptions.

Treason.

Imprison for debt.

is only to be underſtood from Impriſonments for the cauſes foreſaid, and without prejudice of all perſonal Diligence, or Impriſonments for payment of Debts, or upon Sentence, or for any other Cauſes than thoſe above-expreſt, in the ſame way and manner, as was competent before the making hereof; And ſicklike, it is hereby provided and declared, That this preſent Act is no ways to be extended to Colliers or Salters, and the ſame is without Prejudice or Derogation from former Laws, requiring Baill to be given by Chiftains, Land-Lords, or others in the Highlands; Reſerving likeways, Committments, Impriſonments, and the Proſecution of Thefts, Robberies, and Depredations in the Borders and Highlands, according to the former Laws and Cuſtoms, any thing in this Act notwithſtanding, without prejudice alſo to Inferior Magiſtrats, Judges, or Juſtices of Peace and Conſtables, to take Security of perſons for their good Behaviour, and keeping of the Peace, as they have been in uſe formerly to do, or to Impriſon in order to Tryal, for Indignities done to the ſaids Inferior Magiſtrats, Judges, or Juſtices of Peace, or to Impriſon Parties Diſobedient and Contumacious to Church Cenſures, Vagabonds, and Maſterful Beggers, or to Impriſon for Riots, Bloods and Batteries, or perſons found Acting in Tumults, or for Drunkenneſs, Sabbath-breaking and Swearing, Uncleanneſs, Pickeries, and Thiefrag; for which Caſes, or any of them, it ſhall be lawful to proceed as formerly, the perſons Impriſoned having always his Relief by offering Baill, and demanding a Tryal as above, As alſo providing, That, in the Caſe of Imminent or Actual Invaſion, Rebellion, or Inſurrection, Committments may proceed, by Order of the Privy Council, or any Five of their Number, upon Suſpicion of Acceſſion thereto, without being lyable to any Penalty for the ſaid Committment, the Perſon Impriſoned having always his Relief for Tryal or Liberation as aforeſaid. And His Majeſty, with Conſent foreſaid, *Statutes and Ordains*, That the Pain of Wrongous Impriſonment ſhall be ſix thouſand pound for a Nobleman, four thouſand pound for a Landed Gentleman, two thouſand pound for every other Gentleman and Burgeſs, and four hundred pound for other Perſons; And if any Priſoner be detained after elapſing of

WILL. P. 1, 1701, c. 6, —EXCEPTIONS.

Colliers, &c.

Breaches of the peace.

Beggars, ſwearers, &c.

Invaſion

V, Pains.

WILL. P. 1, 1701, c. 6, —PAINS. the reſpective days in manner above-preſcribed, for obtaining his Liberty, the Judges, Magiſtrats, or others wrongouſly detaining, ſhall be lyable in the pains following, *viz.* Of an hundred pound for each day for a Nobleman, ſixty ſix pound thirteen ſhilling four pennies for a Landed Gentleman, thirty three pound ſix ſhilling eight pennies for other Gentlemen and Burgeſſes, ſix pound thirteen ſhillings four pennies for other perſons: And farder, ſhall loſe their Offices, and be incapable of publick Truſt, by and attour the pains above-ſpecified, and the penalty to belong to the Party Impriſoned, and Proceſs to be competent for the ſame before the Lords of His Majeſties Privy Council, or before the Lords of Council and Seſſion, to be diſcuſſed by them ſummarly, without abiding the Courſe of the Roll; And it is hereby declared, That the above Penalties ſhall not be modified by any Power or Authority whatſomever. And His Majeſty, with Advice and Conſent foreſaid, extends this Act for preventing of wrongous Impriſonment to the Caſe of all Confinements, not either conſented to by the Party, or inflicted after Tryal by Sentence; And farder, diſcharges all cloſs Impriſonments beyond the ſpace of eight days from the Commitment, under the pains of wrongous Impriſonment above-ſet-down. As alſo, That no Perſon be Tranſported furth of this Kingdom, except with his own Conſent given before a Judge, or by Legal Sentence, certifying Judges and Magiſtrats, and all others, who ſhall give Order otherways for the ſaid Tranſportation, as likeways, all ſuch who ſhall Tranſport any perſon without a lawful Warrand from a Judge or Magiſtrat, That he ſhall be lyable to the foreſaid pains of Wrongous Impriſonment, as alſo of being deprived, and declared incapable of all publick Truſt. And His Majeſty, with Advice and Conſent foreſaid, Enacts and Declares, That Action and Proceſs for Wrongous Impriſonment ſhall preſcrive, if not purſued, within three Years after the laſt day of the Wrongous Impriſonment; And Proceſs being once raiſed, the ſame ſhall preſcrive, if not inſiſted in yearly thereafter. And it is hereby *Statute and Ordained*, by Advice and Conſent foreſaid, That no Member of Parliament attending, ſhall be Impriſoned or Confined, upon any Account whatſomever, during a Seſſion of Parliament, without a Warrand of Parliament, reſerving

Noblemen,

landed gentlemen,

burgeſs,

others.

VI, All confinements.

VII, Tranſportations.

VIII, Preſcription.

ıe High Conſtable and Mariſchal their Priviledges and ıdictions in the time of Parliament as formerly; And providing, That if any Member ſhall happen to Com- ı Capital Crime, or if there be a manifeſt hazard of 'eace, any Magiſtrat may attach for ſecuring of the ın or the Peace, and deliver the Perſon to the Cuſto- f the High Conſtable, in Order to the Parliament's ıition the next *Sederunt*. WILL. P. 1, 1701, c. 6, —PARLIAMENTARY PRIVILEGE

No. XXX.

MES I, 1424, c. 7. *Sorrares or companies over-lyand ingis Lieges, ſuld be arreiſted, and ſatisfie the King Partie.* ITEM, The Parliament ſtatutis, and the forbiddis, That na companies paſſe in the Countrie, re upon onie the Kingis lieges or thig or ſojourne outher on Kirk-men or huſbands of the land: And nie complaint be maid of ſik treſpaſſoures to the Shi- of the Land, that he arreiſt ſik folk, and challenge , and taxe the Kingis ſkaith upon them: And gif be convict of ſik treſpaſſe, that they be puniſhed, and burrowes till aſſyith the King and the partie com- and. And gif ſik perſons takis ony ſkaith in the ar- ng of them, it ſal be impute to themſelfes. And in that na complaint be maid to the Shireffe, the Shireffe nquire at ilk head court that he haldis gif onie ſik oures be within his Schireffdome. And gif onie beis den, that they be puniſhed, as is before written. POOR-LAWS Sornares, or maſterful beggers. Puniſhment.

No. XXXI.

MES I, 1424, c. 25. *Of the age and marke of Beggers, f Idle men.* THE King hes ſtatute be conſent of the Parliament ripelie adviſed, that na Thiggeres be ed to beg, nouther to Burgh nor Land-wart, betwixt eene and threeſcore ten zeires, bot they be ſeene be ouncelles of the Tounes, or of the Lande, that they not winne their living uther waies. And they that Who ſuffered to beg.

JAMES I, 1424, c. 25. —POOR LAWS.

ſal be thoiled to beg, ſall have a certaine takin on them to Land-wart of the Schireffe: And in the Burrowes, they ſall have takin of the Alder-men, or of the Baillies. And all uther perſones havand na takins, nouther of lande, nor of Burgh, ſal be charged be open Proclamation, to labour and paſſe to Craftes, for winning of their living, under the paine of burning on the cheike, and baniſhing of the Countrie.

No. XXXII.

JAMES I, 1424, c. 27. *Reformation of Hoſpitalles.*— ITEM, Anent Hoſpitalles that ar founded of Almous deedes, throw the Kinges, to be uphaldan to puir folke, and ſeik; to be viſited be the Chancellar, as they have bene in the Kingis progenitoures times. And they that ar founded be Biſhopes or uther Lords Spiritual or Temporal, to be viſited be the Biſhop and Ordinars, quhom it effeirs to, and reduce and reforme them to the effect of their firſt foundation.

No. XXXIII.

JAMES I, 1424, c. 42. *The age, marke, and paine of Beggers.* ITEM, It is ordaned that na Thigger be thoiled to begge, nouther to Burgh nor land, betuixt fourteene and threeſcoir and ten zeiris, but they be ſeene be the Councell of the Commounes of the Countrie, that they may not win their living utherwaies. And they that ſa beis founden have a certaine takinne to Landwart of the Schireffes, and in Burrowes of Alder-men and Baillies, and that under the paine of burning on the cheik, and baniſhing off the Countrie. And that in everie Burgh out throw the Realme, the Chalmerlaine ſall inquire in his aire zeirlie, gif the Alder-men and Baillies, hes keiped the act, and the forme of the ſtatute. And gif they have broken it, they ſall be in fiftie ſhillings to the King. ITEM, The Schireffes failzieng of the keeping of the ſaid act, to be puniſhed in likewiſe.

Who allowed to beg.

No. XXXIV.

AMES I, c. 103. *Of Beggers.* ITEM, The King hes ute, with conſent of his haill Parliament and Councel, eiked to the ſtatutes maid in his Parliament of Beg- : that in Burrowes, the Chalmerlaine in his air ilk r ſall inquire, gif the Aldermen and Baillies have keep- the ſtatute: And gif they have broken it, they ſall be fourtie ſhillinges to the King. POOR LAWS.

No. XXXV.

AMES II, 1449, c. 22. *Of the away putting of Sorna- feinzied fooles, and vagabowndes.* ITEM, It is ſtatute ordained, for the away putting of Sornares, over-ly- and maiſterful beggers, with horſe, houndes, or uther es, that all officiares, baith Schireffes, Barronnes, Al- men, Baillies, alſweil within the Burgh, as outwith, : ane inquiſition at ilk courte, that they hald of the ſaid things: And gif ony ſik be founden, that their ſe, houndes, or uther gudes be eſcheit to the King, and r perſon put in the Kinges waird, quhill the King have his will to them. And alſwa that the ſaid Schireffe, llies, and Officiares inquire at ilk court, gif there be , that makis them fuiles, and are bairdes, or uthers ſik : rinnares about. And gif onie ſik be funden, that they put in the Kings waird, or in his irones for their treſ- es, als lang as they have ony gudes of their awin to : upon, that their eares be nailed to the trone, or till ane er tree, and their eare cutted off, and baniſhed the cun- . And gif thereafter they be funden againe, that they hanged. Sorners and maſterful beggers. Puniſh- ment.

No. XXXVI.

AMES II, 1455, c. 45. *Sornares ſuld be puniſhed to the th.* ITEM, Quhair ever Sornares be overtane in time

JAMES II, 1455, c. 45. —POOR LAWS.

to come, that they be delivered to the Kingis Schireffes, and that foorthwith the Kingis Juſtices do Law upon them, as upon a thiefe or riever.

No. XXXVII.

JAMES II, 1457, c. 79. *The Juſtice to take inquiſition of ſornares, bairdes, feinzied fuiles, and maiſterful beggares in all Juſtice aires.* ITEM, The Lords thinkis ſpeedeful, that in all Juſtice aires, the Kingis Juſtice gar take inquiſition of ſornares, bairdes, maiſterful beggers, or feinzied fuiles: and outher baniſh them the cuntrie, or ſend them to the Kingis priſon.

No. XXXVIII.

JAMES IV, 1503, c. 70. *Anent Beggers and their qualities.* ITEM, Anent Beggers, that the ſtatute of King *James* the Firſt, maid upon ſterke beggers, be obſerved and keiped. And that the Schireffes, Proveſtes, Baillies within Burrowes, baith of Royaltie and Regalitie, Spiritualitie and Temporalitie, ſee that this act be execute and keiped: And that they thoil nane to beg within them, except cruiked-folke, ſeik-folk, impotent-folk, and weak-folk, under the paine of payment of ane mark, for ilk uther begger, that beis foundin.

No. XXXIX.

JAMES V, 1535, c. 22. *All Beggers ſuld begge within their awin Parocb, and have the marke thereof.* ITEM, For refraining of the multitude of maiſter-ful and ſtrange beggers: It is ordained, that the acte maid thereupon of before, be King *James* the Firſt, apprieved, and ratified be uthers our Soveraine Lordis Predeceſſoures, be obſerved, keiped, and put to ſcharpe execution in all poyntes, with

Beggars confined to the pariſh.

addition: That na beggers be thoiled to beg in ane ochin, that ar borne in ane uther, and that the headef- of ilk Parochin, make takinnes and give to the beg- thereof, and that they be ſuſteined within the bounds that Parochin, and that nane uthers be ſerved with al- within the bounds of that parochin, bot they that ris that takinne allanerlie, under the pains conteined in ſaid acte. And that the Juſtice Clerke make inquiſi-, and take dittay hereupon at everie Juſtice aire. And ordainis letters to be direct to command and charge the veſt and Baillies of *Edinburgh*, and all uthers Proveſtes, Begging. lies of Burrowes, Schireffes, and uthers Officiares of Kingis, to put this acte to execution in all poyntes, the famin to be publiſhed at all places neidful, ſwa that e ſall pretend ignorance, or alleage they knew not the in in time to-cum.

JAMES V, P. 4, C. 22, POOR LAWS

No. XL.

Ja VI, Parl. 6, 1579, c. 74. *For puniſchment of ſtrang id Idle Beggars, and reliefe of the pure and impotent.*

ORSAMEIKLE as there is findrie lovabil Acts of iament maid be our Soveraine Lords maiſt nobil Pro- touns, for the ſtanching of maiſterful and idle Beggers, y putting of fornares, and proviſion for the pure: Bear- that nane ſall be thoiled to beg, nouther to Burgh nor and, betwixt 14. and 70. zeires. That ſik as makes nſelves Fules and ar Bairdes, or uthers ſiklike runners at, being apprehanded, ſall be put in the Kingis Waird rones, ſa lang as they have ony gudes of their awin to on. And fra they have not quhairupon to live of their n, that their eares bee nayled to the Trone, or to an ir tree, and their eares cutted off, and baniſhed the ntrie, and gif thereafter they be found againe, that they anged.

ITEM, That nane bee thoiled to begge in ane Parochin, ar borne in ane uther. That the headef-men of ilk Pa- in, make takinnes, and give to the Beggares theirof,

JAMES VI, P. 6, 1579, C. 74, POOR LAWS

that they may bee ſuſteined within the boundes of that Parochin. And that nane uther bee ſerved with almes, within that Parochin, but they that beares the takinne allanerlie, as in the Actes of Parliament maid theiranent, at mair length is conteined. Quhilkes in time bygane, hes not bene put to dewe execution, throw the iniquitie and troubles of the time by-paſt, and be reaſſoun that there was not heirtofoir ane ordour of puniſchment ſa ſpeciallie deviſed, as need required, bot the ſaidis Beggares, beſides the uthers inconvenientes, quhilks they daylie produce in the commounwealth, procures the wrath and diſpleaſure of GOD, for the wicked and ungodlie forme of living, uſed amangs them, without mariage or baptizing of a great number of their bairnes. THEREFOIR now, for avoyding of the inconvenients, and eſchewing of the confuſion of ſindrie Lawes and Actes, concerning their puniſchment, ſtanding in effect. And that ſum certaine execution, and gude ordour may follow theranent, to the great pleaſure of Almichtie God, and common weill of the Realme: IT IS thocht expedient, ſtatute and ordained, aſweil for the utter ſuppreſſing of the ſaidis ſtrang and idle beggers, ſa contageous enimies to the commoun weill: As for the charitabil releeving of aged and impotent pure peopil, that the ordour and forme following bee obſerved: That is to ſay, that all perſones, being above the aige of fourteene and within the aige of three-ſcoir and ten zeires, that heirafter ar declared and ſet foorth be this Act and ordour, to be vagaboundes ſtrang and idle beggars, quhilkes ſall happen at ony time heirafter, after the firſt day of Januar nixt-to-cum, to bee taken wandering and miſordering themſelves, contrarie to the effect and meaning of thir preſentes, ſall be apprehended, and upon their apprehenſion be brocht befoir the Proveſt and Baillies within the Burgh, and in everie Parochin in Landwart, befoir him that ſall be conſtitute Juſtice be the Kingis Commiſſion, or be the Lords of Regalitie, within the ſamin to this effect: And be them, to bee committed in waird, in the commoun priſon, ſtokkes or irons, within their juriſdiction, there to be keiped, unlatten to libertie, or upon bande or ſovertie, quhill they be put to the knawledge of ane Aſſiſe, quhilk ſall be done within ſex dayes thereafter. And gif

Suppreſſion of ſtrong and idle beggars;

apprehended.

Aſſize.

ey happen to be convicted, to bee adjudged to be ſcour- JAMES VI,
d and burnt throw the eare, with ane hote iron: The P. 6, 1579.
oceſſe quhairof ſall be regiſtrate in the Court buikes: POOR LAWS
xcept ſum honeſt and reſponſal man, will of his charitie,
e contented then preſentlie, to Act himſelfe before the
idge, to take and keip the offender in his ſervice, for ane
ill zeir nixt following, under the paine of twentie pound,
the uſe of the pure of the Town or Paroshin. And to bring
e offendour to the head Court of the Juriſdiction at the
ires end, or then gude pruife of his death, the Clerke
king for the ſaid Acte, twelve pennies onely: And gif
e offender depart and leave the ſervice within the zeir,
ainſt his will that receivis him in ſervice: Then being
prehended, he ſall be of new preſented to the Judge, and
his command, ſcourged and burnt throw the eare, as is
eſaid. Quhilk puniſchment, being anis received, hee In what
l not ſuffer againe the like, for the ſpace of threeſcoir caſe puniſh-
yes thereafter, bot gif at the ende of the ſaidis lx. days, ment capi-
e be founden to be fallen againe in his idle and vaga- tal.
und trade of life: Then being apprehended of new, he
l be adjudged, and ſuffer the paines of death as a thief.
AND that it may be knawn, quhat maner of perſones ar
aned to bee idle and ſtrang beggares, and vagabounds,
d worthie of the puniſchment before ſpecified, IT IS de- Deſcription
ared, that all idle perſones, ganging about in ony Coun- of the per-
e of this Realme, uſing ſubtil, craftie, and unlauchful ſon.
ayes, as Juglarie, Faſt-and-lous, and ſik uthers. The
e peopil calling themſelves *Ægyptians*, or any uther, Gypſies.
at feinzies them to have knawledge or Charming, Pro-
iecie, or uthers abuſed ſciences, quhairby they perſwade
e peopil that they can tell their weirdes, deathes and
rtunes, and ſik uther phantaſtical imaginations: and all
erſones being haill and ſtarke in bodie, and abill to
oorke, alledging them to have bene herried or burnt, in
m far pairt of the Realme, or alledging them to be ba-
ſhed for ſlauchter, and uthers wicked deides: and uthers
uther havand land nor Maiſters, nor uſing ony lauchful Minſtrels,
erchandice, craft or occupation, quhairby they may win &c.
eir livings, and can give na reckoning how they lauch-
fully get their living: and all Minſtrelles, Sangſters, and
ale-tellers, not avowed in ſpecial ſervice, be ſum of the

JAMES VI, P. 6, 1579, C. 74. POOR LAWS

Lords of Parliament or great Burrowes, or be the head Burrowes and Cities for their commoun Minſtrelles: all commoun labourers, being perſonnes abill in bodie, living idle, and fleeing labour: all counterfaicters of licences to beg, or uſing the ſame, knowing them to be counterfaicted: all vagabound ſchollers of the Univerſities of *Saint-Andrewes*, *Glaſgow*, and *Abirdene*, not licenced be the Rector and Deane of Facultie of the Univerſitie, to aſk almes: all Schip-men and Mariners, alledging themſelves to be ſchip-broken, without they have ſufficient teſtimonialles, ſall be taken, adjudged, eſteemed and puniſhed, as ſtrang Beggarres and Vagaboundes. And gif ony perſon or perſones, after the ſaid firſt of Januar nixt-to-cum, gives money, harberie or ludgeing, ſettis houſes, or ſhawis ony uther reliefe, to ony vagabound or ſtrang begger, marked or to be marked, wanting an licence of the Proveſt and Baillies within Burgh, or of the Judge within that Parochin: The ſamin being dewlie provin at the Court, they ſall pay ſik unlaw to the uſe of the pure of the Parochin, as be the Judge, at the Court ſall be modified, ſwa the ſame exceed not five punds. And alſwa, gif any perſon or perſones, diſturbis or lettis the execution of this Act ony maner of wayes, or makis impediment againſt the Judges and ordinarie officiars, or uthers perſones, travelling for the dew Execution heirof, they ſall incur the ſame paine quhilk the vagabound ſuld have incurred, in caſe he had bene convict. Providing alwayes that ſchipmen and ſouldiours, landing in this Realme, have licence of the Proveſt or Baillie of the Towne, or Judge in the Parochin, quhair they war ſchippe-broken, or firſt entred in the Realme, ſall, and may paſſe, according to the effect of their licences, to the rowmes quhair they intend to remayne. And that the licences onelie ſerve, in the jurisdiction of the giver; Sa that gif the perſon travelling hame, have farther journey, he procure the like licences of the Judge of the nixt Parochin or Town, throw quhilk he mon paſſe, and ſa fra Parochin to Parochin, quhill he be at his reſting place. And that there be certaine perſones, ane or maa nominate, in everie Burgh and Parochin, be the officers and Judge thereof, for ſearching, receiving, and convoying of the vagaboundes, to the commoun priſon, Irones

Vagabond ſcholar.

Penalty for giving to beggars.

Licence.

ikkes, upon the commoun charges of the Parochin. JAMES VI, P. 6, 1579, C. 74, POOR LAWS
ilkes perſones ſa erected, ſall be halden to do their
ie diligentlie, as the ſaidis Judges will anſwere there-
. And ſeeing charitie wald, that the pure aged, and
tent perſones, ſuld be als neceſſarilie provided, as the
boundes and ſtrang beggars repreſſed, and that the
, impotent, and pure people, ſuld have ludgeing and
ng places, throughout the Realme, to ſettle themſelves

IS therefore thocht expedient, ſtatute and ordained, 2d part.
the Lorde Chancellar, according to the direction of ſin-
lovabil Actes of Parliament heirtofoir maid, ſall call
he erectiones of all Hoſpitalles, to be produced befoir
and inquire and conſidder, the preſent Eſtaite theirof,
:ing them, ſa far as is poſſible, to the firſt inſtitution,
ay beſt ſerve, for the helpe and reliefe of the ſaidis Relief of the indigent.
impotent, and pure peopil. And als that the Pro-
and Baillies of ilk Burgh and Towne, and the Juſtice
itute, be the Kings commiſſion, in every Parochin
idwart, ſall betuixt and the firſt ſaid day of Januar
to-cum, take inquiſition of all aged pure, impotent
decayed perſones, borne within that Parochin, or
ikes war dwelling, and had their maiſt commoun re-
in the ſaide Parochin, the laſt ſeven zeires by-paſt,
lkes of neceſſitie mon live bee almes: And upon the
inquiſition, ſall make ane Regiſter buike, conteining
names, and ſur-names, to remaine with the Proveſts
Baillies within Burgh, and with the Juſtice in everie
chin to Land-wart: And to the effect, that the num-
of the pure people of everie Parochin, maye be knawin,
tis and ordainis, that all pure peopil, within fourtie
s after the Proclamation of this preſent Act, at the
at Croce of *Edinburgh*, repayre to the Parochin,
ir they were borne, or had their maiſt commoun re-
or reſidence, the laſt ſeven zeires by-paſt, and there ſet-
hemſelves, under the paine, to bee puniſhed as vaga-
ides, and contravenars of this preſent Proclamation:
the ſaid ſpace of fourtie dayes being bypaſt, that then
Proveſts and Baillies within Burrowes, and the Judge
:itute, be the Kingis commiſſion in ilk Parochin,
and-wart, make a Catalogue, of the names of the

JAMES VI, P. 6, 1679, C. 24, POOR LAWS

ſaidis pure people, inquire the men and wemen, quhair they wer borne, quhidder they ar maryed or un-maried, quhen, and be quhom they war maried, and quhat bairnes they have, and quhair their bairnes wer baptized, and to quhat forme and trade of life, they addreſſe them-ſelves and their ſaidis bairnes: Gif they be diſeaſed or haill, and abill in bodie, and quhat they get commonly on the daye, be their begging: And ſik as neceſſairlie mon be ſuſteined be almes, to ſee quhat they may be maid content of their awin conſentis, to accept daylie to live unbeggand, and to provide quhair their remaining ſall be, be them-ſelves, or in hous with others, with adviſe of the Parochiners, quhair the ſaidis pure peopil, may be beſt ludged and abyde. And thereupon, according to the number, to conſider quhat their neideful ſuſtentation will extende to everie oulk: and then, be the gude diſcretions of the ſaidis Proveſts, Baillies and Judges, in the Parochinis to Land-wart, and ſik as they ſall call to them to that effect, to

Stent.

taxe and ſtent the haill inhabitantes within the Parochin, according to the eſtimation of their ſubſtance, without exception of perſones, to ſik oulkie charge and contribution, as ſall be thocht expedient and ſufficient, to ſuſteine the ſaidis pure peopil. And the names of the inhabitants ſtented, togidder with their taxation, to bee likewiſe regiſtrate; And that at their diſcretion, they appoynt overſeers and Collectours in everie Burgh, Toun and Paroche, for the haill zeir, for collecting and receiving of the ſaid oulkie portion, quhilkes ſall receive the ſame, and deliver ſa-meikle thereof to the ſaidis pure peopil, and in ſik maner, as the ſaidis Proveſts and Baillies within Burgh, and Judges, in the Parochin to Landwarte, *reſpectivè*, ſall ordaine and command: And that overſeeres of the ſaidis pure peopil, be appoynted be their diſcretions, to continue alſo for a zeir. And at the end of the zeir, that the taxation and ſtent Roll be alwayes maid of new, for the alteration that may be throw death, or be incres or diminution of mennes gudes and ſubſtance. And that the Proveſts and Baillies in Burrowes or Tounes, and the ſaidis Judges, in the Parochinnes to Land-wart, ſall give an Teſtimonial to ſik pure folk, as they finde not borne in their awin Parochin, or making reſidence therein, the laſt ſeven zeires,

Teſtimonial to thoſe not born in the pariſh.

ling or directing them to the nixt Parochin, and ſa fra JAMES VI, P. 6, 1579, C. 24. POOR LAWS
ochin to Parochin, quhill they be at the place quhair
r were borne, or had their maiſt commoun reſort and
lence, during the laſt ſeven zeires preceeding; there to
ut in certaine abiding places, and ſuſteined upon the
moun almes, and oulkie contribution, as is befoir or-
ed, except Leprous peopil, and bedfaſt peopil, quhilks
not be tranſported. Prowiding that it be leiful to the
peopil, ſa directed, to their awin abiding places, with
imonialles to aſke almes in their paſſage, ſa as they
the direct way, not reſting twa nichtes togidder in
an place, without occaſion of ſeekeneſſe or ſtorme im-
e them.

ND gif ony of the pure peopil refuſe to paſſe and
e in the places appoynted, or after the appoyntment,
ound begging, then to be puniſhed be ſcourging, im-
nment, and burning throw the eare, as vagabounds
ſtrang beggars: and for the ſecond fault, to be puniſh- Puniſhment
thieves, as is befoir appoynted. And gif the per- of thoſe re-
choſen Collectoures, refuſe the office, or having ac- fuſing.
ed the ſame, beis found negligent therein, or refuſis to
e their compts everie half zeir anis, at the leaſt, to
Proveſts and Baillies in Burrowes, and to the ſaidis
es in Land-wart, and to deliver the ſuper-plus of that
lk reſtis in thair handes, at the end of the zeir, or
zeir, to ſik as ſall be choſen Collectours of new:
ilk-ane of the Collectours ſo offending, ſall in cur
aine of twentie punds, to the uſe of the pure of that
chin, and impriſonment of their perſones, during the
is will: For quhilkes paines, the ſaidis Proveſts, Bail-
and Judges, ſall poynd and diſtrenzie: And gif ony Puniſhment
nes, being abill to further this charitable woorke, for refuſing
obſtinatlie refuſe to contribute to the reliefe of the bute.
, or diſcourage uthers from ſa charitabil ane deede:
obſtinate or wilful perſon, being called befoir the
Proveſts and Baillies within Burgh, or Judges in the
chins to Land-wart, and convict thereof, be ane Aſſiſe,
fficient teſtimonie of twa honeſt and famous witneſſes
ichtbours, upon the ſupplication of the ſaidis Proveſts,
ies and Judges, to the Kings Majeſtie, and his privie
cel: the obſtinate and wilful perſon or perſones, ſall

JAMES VI, P. 6, 1579, C. 24, POOR LAWS

be commanded to waird in ſik pairt, as his hienes, and his Councel ſall appoynt, and there remaine, quhill he be content with the ordour of his ſaid Paroch, and performe the ſame in deede: And gif the aged and impotent perſones, not being ſa diſeaſed, lamed or impotent, bot that they may woork in ſum maner of wark, ſall be bee the overſeers in ony Burgh or parochin, appoynted to wark, and zit refuſis the ſame: Then firſt the refuſer to be ſcourged, and put in the ſtokkes: and for the ſecond fault, to be puniſhed as vagabounds, as ſaid is. And gif any beggers bairne, being above the age of five zeires, and within fourteene, male or female, ſall be liked of, be ony ſubject of the Realme of honeſt eſtait: The ſaid perſon, ſall have the bairne, be ordoure and direction of the ſaids Proveſt and Baillies within Burgh, or Judge in every Parochin to Land-wart. Gif he be a man-child, to the age of xxiv. zeires, and gif ſche be a woman child, to the age of xviij zeires, and gif they depart, or be taken or intiſed from their Maiſter or Maiſtreſſe ſervice, the Maiſter or Maiſtreſſe, to have the like action and remedie, as for their hired ſervand or prentiſes, aſweil againſt the bairne, as againſt the taker, and intiſer thereof. And quhair collecting of money may not be had, and that it is over great ane burding to the Collectours, to gadder victualles, meat and drink, or uther things for reliefe of the pure in ſum Parochines: That the Proveſt and Baillies, in Burrowes, and the ſaidis Judges, in the Parochines to Land-wart, be adviſe of certaine of the maiſt honeſt Parochiners, give licence under their handwrits to ſik, and ſa many of the ſaidis pure people, or ſik uthers of them, as they ſall think gude, to aſke and gadder the charitable almes, of the Parochiners, at their awin houſes. Sa as alwayes, it bee ſpeedely appoynted and agried, how the pure of that Parochin, ſall be ſuſteined within the ſame, and not to be chargeable to uthers, nor troubleſome to ſtrangers. And ſeeing be reaſon of this preſent act and ordour, the commoun priſones, irones and ſtokkes of everie head Burgh of the Schire, and uthers Townes, ar like to be filled, with ane greater number of priſoners, nor of befoir hes bene accuſtomat, in ſa far, as the ſaidis vagaboundes, and uthers offendours, ar to be committed to the commoun priſon of the Schire or towne,

Refuſing to work.

Children given over to individuals.

Licence to beg.

: they were taken, the ſame priſones being in ſik JAMES VI, P. 6, 1579, c. 24, POOR LAWS
s, quhair there is great number of pure people, mair
ey ar weill abill to ſuſteine and relieve: And ſa the
ers ar like to periſh in default of ſuſtenance: There-
ie expenſes of the priſoner, ſall be payed be a pairt
commoun contributions, and oukly almes of the Pa-
, quhair he or ſche was apprehended, allowand to
erſon daily ane punde of Ait breade, and water to

For payment quhairof, the preſenter of him to Expences of priſoners.
, ſall give ſovertie, or make preſent payment. And
he Schireffes, Stewardes and Baillies of Regalities,
eir Baillies over all the Realme, and their deputes,
is preſent act, put to dew execution in all poyntes,
i their juriſdictions *reſpectivè*, as they will anſwere
d, and our Soveraine Lord thereupon. And quhat
doubt or ambiguitie ſall happen to ariſe upon this
t Act, or ony pairt thereof: OUR Soveraine Lord,
dviſe of his ſaidis three Eſtaites, committis the in-
tation, explanation ſuppliement and full execution
f, to his Majeſtie, with adviſe of his privie Councel.

No. XLI.

ES VI, Parl. 12, 1592, *c.* 149. *For puniſhment of maiſterfull beggares, and reliefe of the puir.*

JR SOVERAINE LORD, and his Eſtaites, POOR LAWS
s preſent Parliament, ratifies and apprievis his Hienes
f Parliament maid for puniſhment of ſtrang and idle
rs, and proviſion for reliefe of the puir and impotent:
ordainis the ſame to be put in execution in all partes
Realme, as it is already tane effect, within the partes
Burgh of *Edinburgh*; And becauſe ſum of the Schi-
omes, ar of wide and lang boundes, quhair-throw
ll be difficil, to convoy vagaboundes and perſones
ing, to the commoun priſones of the head Burrowes
ie Schire: Therefore ordaines and commandis all
effes, Stewartes, Baillies, Lordes and Baillies of Re-
es, and their deputes: And Proveſtes and Baillies

JAMES VI, P. 12, 1592, C. 149, POOR LAWS

within Burrowes, to make priſones, ſtockes and irones; Not only at the head Burgh, but alſo at the principal throwfaire tounes, and Paroche Kirkes, within the haill boundes of the Schire: alſweill to Burgh, as to Land-wart; And to conſtitute ane or twa Schireffe-deputes, of honeſt and zealous men of beſt credite and power in the boundes within, or nixt adjacent to the ſaidis Burrowes, throwfaire Townes and Paroche Kirkes, to put the effect of the ſaid act of Parliament in execution: Or gif the ſaidis Schireffes, or utheris Judges ordinar, beis found remiſſe or negligent: gives and grantis, full power, charge and authoritie, to the Miniſters, Elders and Deacons within the boundes of everie Parochin, or of ſa monie parochines as will concur togidder, to nominate and elect ane, twa, three, or maa perſones of the beſt habilitie, zeale and diſcretion, within the ſame Parochin or boundes, quhom his Hieneſſe makis and conſtitutis Juſtices and Commiſſioners in that parte, to the effect under-written; Givand, grantand, and committand to them, conjunctly and ſeverally, full power, charge and authoritie, to execute the ſaid act of Parliament, concerning the puniſhment of ſtrang and idle beggares and vagabounds and proviſion for reliefe of the puir and impotent: And to that effect, to fenſe and hald courtes, create Officiares ſummond aſſiſe, ilk perſon under the paine of five poundes, un-lawes and paines, to take, uplift and raiſe; And for the ſame, gif neede beis, to poynd and diſtrenzie, and to the uſes conteined in the ſaid acte applie; And generallie all and ſindrie uther thinges, to do, exerce and uſe, that to the full execution of the ſame acte of Parliament, within the ſaidis boundes, is neceſſarlie required. And in-caſe the ſaidis Judges ordinar, or their deputes, or the ſaidis perſones to be nominate and elect, as ſaid is, conſtitute Juſtices and Commiſſioners, be the authoritie of this preſent acte of Parliament, ſall happen to refuſe or delay, to accept and uſe the Commiſſion; Or having accepted the ſame, ſall be found remiſſe or negligent in execution thereof: they ſall incurre the paine and un-law appointed, againſt Judges and Magiſtrates, be the ſaid act of Parliament: quhair-upon dittay ſall be uptaken, and they called and accuſed therefore, at general Juſtice aires, or particular diettes; Or then letters ſall be

Making of priſons.

Nomination of perſons to execute the acts.

eliverance of the Lordes of Councell and Sef- JAMES VI,
ing alſweill the ſaidis Judges ordinar and their P. 12, 1592,
the ſaidis perſones to be nominate and elected; C. 149,
te Juſtices and Commiſſioners, be this preſent POOR LAWS
ament; upon the fight of the acte and teſtimo-
r nomination and election: to put the ſaid act
nt to execution in all poynts: after the forme
thereof, within fourtie daies, nixt after the
der the paine of rebellion, and putting of them
ie; And gif they failzie therein, the ſaids four-
eing bypaſt; to denunce the diſobeyares, re-
put them to the horne: And to eſcheit and in-
their movable guddes to his Hieneſſe uſe, for
nption. And for the better tryall of commoun
gaboundes, and maiſterfull beggares: feinzied
ounterfaict *Ægyptianes*: And to the effect that
e ſtill perſewed, quhill they be compelled to
at ſum certaine dwelling, or be expelled foorth
ntrie: That the Schireffes and uther Judges or-
their deputes, and uther Juſtices and Commiſ-
ie ſpecified, take inquiſition be inqueſt, at the
es zeirlie, of the names and takens of them;
denunciation of them, to the nixt ordinar Judges
innes, in the four halfes about: As alſo to our
Lord, and his ſecret Councell, within 40. dayes
ids head courts under the paine foreſaid.

No. XLII.

Parl. 15, 1597, c. 272. *Strang beggers, va-
bounds, and* Ægyptians *ſuld be puniſhed.*

ioveraine Lorde, and Eſtaites of Parliament, ra- POOR LAWS
apprieves the actes of Parliament made of be-
iſt ſtrang and idle beggers, vagabounds, and
with this addition, That ſtarke beggers and
es, be imployed in commoun warkes: And their
ntioned in the act of Parliament, in the zeir of
e thouſand, five hundreth, ſeventy nine zeires, to

JA. VI, P. 15, 1797, C. 172 POOR LAWS

be prorogate, induring their life-times: And in place of ſeveral commiſſions in Landward to be granted be the King, for execution of the ſaid act, the power thereof to be granted to the particular Seſſion of the Kirk.

No. XLIII.

JAMES VI, Parl. 16, 1600, c. 19. *Ratification of the act anent ſtrong and idle beggers.*

OUR SOVERAIGNE LORD, with advyſe of the Eſtaites of this preſent Parliament, ratifies and confirmes the act made by his Heighnes and Eſtaites conveined at *Perth* the firſt day of *Aprile* laſt by paſt, againſt ſtrong and idle beggers; whereof the tenour followes. The Kings Majeſty and Lords of ſecret Councell, remembering how there hes bene diverſe gude and lovable acts of Parliament and ſecret Counſell, made and publiſhed heretofore, for puniſhment of ſtrong and idle beggers, and releefe of the poore and impotent. And how the ſaids acts hes received litle or no effect, or execution by the overſight and negligence of the perſons, who were nominat Juſtices and Commiſſioners, for putting of the ſaids acts to full and due execution. And that there was not a ſpecial penalty, appoynted and enjoyned to them, who ſhould be remiſſe and negligent therein. So that the ſtrong and idle beggers being for the moſt part theeves, bairds and counterfitte limmers, living moſt inſolently and ungodly, without mariage or Baptiſme of a great number of their children, are ſuffered to vaig and wander throughout all the haill Countrie, and the poore and impotent perſons are neglected, and no care had, nor proviſion made for their entertenment and ſuſtentation. For remeid whereof, and ſupply of the ſaids acts, and namely of the act of Parliament made in the yeare of God 1597. Whereby the execution of the acts of Parliament, is committed to the particular Seſſions of the Kirk, It is ſtatute and ordained by the Kings Majeſty, with advyce of the Lords of his ſecret

unſell, that the ſaids Seſſions of the Kirk, where need ſhall be aſſiſted by ane or twa of the Preſbyteries; and it they ſhall put the ſaids acts to full and due execution, iforme to the tenour thereof in all poynts, every an of :m within their awne bounds, under the paine of twen- pounds to be exacted of them, ſo oft as they ſhall be ind to be remiſſe or negligent herein. And that theſe :ſents ſhall begine to take effect, and have execution up- the firſt day of June next to come. And to the effect Majeſty may be the better aſſured of the care and dili- ice of the ſaids Seſſions of the Kirk, in the due execu- n of the ſaids acts of Parliament, his Majeſtie commands haill Preſbyteries of this Realme, to take diligent tryel the obedience of the Seſſions hereanent, and to report ir certificat and teſtimonial there-upon, to his Majeſties niſters, betuixt and the firſt day of Auguſt next to ne, wherethrow his Majeſty may thereafter proceed ainſt ſik as ſhall be negligent as accords: And that let- s of publication be direct here-upon as effeiris; where- ow the ſaid Seſſions of the Kirk, nor no other pretend iorance. And to command and charge the ſaid Seſſions the Kirk to put the ſaids acts of Parliament made ainſt ſtrong and idle beggers, whereof the execution is nitted to them, by the ſaid act of Parliament made in : foreſaid yeare of God 1597. to due and full execution all poynts, conforme to the tenour thereof, betuixt and : ſaid firſt day of *June* next to come, under the ſaid ine of twenty pounds to be exacted off them, ſo oft as ey ſhall be founden to be remiſſe after the ſaid day. Cer- ying them that failyes, that the ſaid paine ſhall be up- ted off them with all rigour. And ſik-like to command d charge the ſaids Preſbyteries to take tryel of the ſaids ſſions here-anent, and to report their teſtimonial there- ion betwixt and the firſt day of *Auguſt*, as ſaid is. As ey will anſwere to his Majeſty upon their obedience at eir uttermoſt charge and perell.

JA. VI, P. 16, 1600, C. 19. POOR LAWS

Preſbyte- ries to aſſiſt the ſeſſions

No. XLIV.

JAMES VI, Parl. 20, 1609, c. 13. *Act anent the Egiptians.*

POOR LAWS OUR SOVERAIGNE LORD, and Eſtaites of Parliament, Ratifies, approves and perpetuallie confirmes the Act of Secreet Councell made in the Moneth of *June* or thereby, 1603. years, and Proclamation following there-upon. Commanding the Vagabounds, ſorners and common thiefes commonlie called Egiptians, to paſſe forth of this Kingdome, and remaine perpetuallie forth thereof, and never to returne within the ſamin, under the paine of death, and that the ſamin have force and execution after the firſt day of *Auguſt* next to come. After the whilk tyme if any of the ſaids vagabounds, called Egiptians, als well wemen as men, ſhall be found within this Kingdome or any part thereof; It ſhall be leſome to all his Majeſties goods ſubjects, or any ane of them, to cauſe take, apprehend, impriſon and execute to death the ſaids Egiptians, either men or wemen, as common, notorious and condemned theives, by ane aſſiſe onely to be tryed, that they are called, knawn, reput and halden Egiptians. In the whilk cauſe, whaſoever of the aſſyſe happins to clenge any of the foreſaids perſons Egiptians pannelled, as ſaid is, ſhall be perſewed, handled and cenſured as committers of wilfull error. And whaſoever ſhall at any tyme thereafter reſet, receave, ſupplie or intertein any of the ſaids Egiptians either men or wemen ſhall tyne their eſcheat, and be warded at the Judges will. And that the Schirefs and Magiſtrats in whais bounds they ſhall publictlie and avowedlie reſort and remain, be called before the Lords of his Heighnes Secreet Counoell, and ſeverely cenſured and puniſhed for their negligence in execution of this Act. Diſcharging all letters, protections and warrants whatſomever purchaſſed by the ſaids Egiptians or any of them from his Majeſtie or Lords of Secreet Councell, for their remaining within this Realme as ſurreptiouſlie and deceatfullie obteined by their knawledge. Annulled alſo all warrants purchaſ-

or hereafter to be purchaſed by any ſubject of whatever ranke within this Kingdome for their reſet, intey-ning or doing any manner of favour to the ſaids iptians at any tyme after the ſaid firſt day of *Auguſt* ct to come for now and ever. JAMES VI, P. 20, 1609, C. 13, POOR LAWS

No. XLV.

ES VI, Parl. 20, 1609, c. 14. *Ratification given be the King to the Secreet Councell to receave Reſignations.*

UR SOVERAIGNE LORD, and Eſtaites of preſent Parliament, Ratifies and approves the commiſ- given by his Majeſtie upon the fourth day of *Apryle*, 3. yeares, to the Lords of his Majeſtie's Secreet Coun- to receave reſignations of lands halden of his Majeſtie, give infeftments there-upon. And decernes and ordeins and whatſomever Reſignations made ſen the date of the commiſſion conforme thereto in the hands of the Lords his Highnes privie Councell, and all infeftments proding there-upon, orderlie paſt his Heighnes Caſchet, giſter and ordinare ſeales, together with all confirmas graunted by his Majeſties ordinar officers of Infeftnts of any lands perteining to his Majeſties faithfull ſubs; whilks confirmations are lykwyſe orderlie paſt his jeſties Caſchet and remanent ſeales and ordinare regis; together with all and ſundrie infeftments and conations to be hereafter paſt and exped upon the lyke reations in the hands of the Lords of his Majeſties Seet Councell, and orderlie exped throw his Majeſties les and regiſters, to have bene and to be now and in all ne comming, als lawfull, valeid and ſufficient in Judgnt and out-with, as if the ſaids reſignations had bene de in his Heighnes awne hands, and had bene receaved his Heighnes, and as if the ſignatours of the infeftnts following there-upon, and of the ſaids confirmans had bene ſigned and ſubſcryved with his awne Royall nd.

No. XLVI.

JAMES VI, Parl. 22, 1617, c. 10. *Anent the Poor.*

POOR LAWS FORASMUCH As there hath been divers worthy Laws and Statutes made by His Majeſty, and his Highneſs Predeceſſors, for reſtraining of idle and maſterful Beggers: and that notwithſtanding thereof, the number of the ſaids Beggers hath daily increaſed, more and more; and His Majeſty, and Eſtates, conſidering, that the cauſe of the multiplying of the ſaids Beggers, hath, and doth, proceed from this ground, That no order hath been taken in bygone time, with the poor Children and Orphans, born of poor indigent Parents, who being tollerated or neglected, at their firſt entry to begging, doth contract ſuch a Cuſtome and habite, that hardly they can be drawn thereafter to any other calling: whereas if the ſaids Children were in their tender years put to work, and imployed, and trained up in any commendable labour, they might thereafter not onely relieve the country of their charges, but alſo prove profitable to the Common-wealth: which might be eaſily performed, if the ſaids poor Children were taken off the hands of their Parents, by ſome of his Majeſties well affected ſubjects in particular, or by any of the incorporations and Burghs within this his Majeſties Kingdom in common, and imployed in ſome calling or vocation, that might tend to the good of the Realme: THEREFORE, His Majeſty with advice and conſent of the Eſtates, doth in moſt earneſt manner, recommend to all his Heighneſs loving Subjects, requeſting them, as they tender the good and honour of the Realme, to receive within their houſes and family, and to take upon their care, intertainment, and education, ſome of the ſaids poor and indigent children, one or moe, every perſon according to his power and faculty: LIKEAS his Majeſty with advice foreſaid, for the farther ſecurity of his Heighneſs Subjects, finds and declares, that it ſhall be lawful to his Heighneſs Subjects, to take the ſaids poor Children in their power, houſes, and family, to be educate, and brought up by them, either

Poor children

put to work.

All to receive the children.

in their houſes, or to be put by them to ſuch Crafts, call- JA. VI, P. 22, 1617, C. 10, POOR LAWS
ings, and vocations, either within the Country or without the ſame, as they pleaſe: which children ſo received, ſhall be oblieged and bound, as ſervants, to the receivers, in manner, and during the time after ſpecified: IT is alwayes declared, that the condition of the ſaids children, which ſhall be ſo received by his Majeſties Lieges, and the manner of their delivery to them, ſhall be as followeth: Poor children. That is to ſay, THAT they be ſuch who ſhall be found and tryed to be poor and indigent, and to have no meanes for their entertainment, and that by the declaration of the Proveſt and Baillies, and by the Seſſion of the Kirk, within Burgh, or by either of them: and the Seſſions of the Kirks in Landward, where the ſaids poor children remaines, or are found to be for the time: and if the ſaids poor children be within the age of fourteen yeares, they ſhall be delivered to his Heighnes Subjects, by the Magiſtrates within Burgh: or by the Seſſion of the Kirk and Parochin where they remaine, with conſent of their parents, if they have any known within the Parochin for the time: otherwiſe they ſhall be delivered by the ſaids Magiſtrates and Seſ- If after 14 years of age.
ſion of the Kirk alone, or either of them, as ſaid is. And if they be paſt the age of fourteen yeares, that their own conſent ſhall be taken thereto, by the advice of the ſaids Magiſtrates and Seſſion of Kirk, or either of them, as ſaid is, who at the delivery of the ſaids poor children, to his Heighneſs Subjects, ſhall give a teſtimoniall, under their, or their Clerks hand writs, of the eſtate, quality, and condition foreſaid, of the ſaid poor children, and of their delivery to their Maſters: Which teſtimonial of the ſaids Proveſts, Baillies, and Seſſion of the Kirks, bearing the ſaid tryall and delivery, his Heighneſs with advice and conſent of the Eſtates foreſaids, findes and declares, ſhall be a ſufficient warrand to the receivers, for brooking the benefit of this preſent ſtatute: And to the effect his Heighneſſe ſubjects may be moved thereto, by the expectation of the Aſtriction of their ſervices. commodity and advantage which they may reap by the labours and ſervice of the ſaids poor children: His Majeſty with advice of the ſaids Eſtates, ſtatutes and ordeins that the ſaids poor children, received by any of his Heighnes Subjects, upon the teſtimonial of Proveſt, Baillies, or Seſſion

JA. VI, P. 22, 1617, C. 10, POOR LAWS

of Kirks, in manner above ſpecified, ſhall be bound and aſtricted to their ſaids Maſters, their heirs and aſſignayes, in all kind of ſervice which ſhall be injoyned to them, until they paſs the age of thirty years compleat, and that they ſhall be under diſcipline to their ſaid Maſters, and their foreſaids, and ſubject to the corrections and chaſtiſements, according to the merits of their offences, in all manner and ſort of puniſhment, their life and torture excepted. Likeas it is declared, that whatſoever the ſaids ſervants gaines, or wins by their travels during the ſaid ſpace, ſhall appertain properly to the ſaids Maſters and their foreſaids: And if it ſhall happen the ſaids ſervants to abſent themſelves from their ſaids Maſters ſervice, without their licence, then and in that caſe they ſhall be oblieged to refund to their ſaids Maſters the whole damage and intreſſe ſuſtained by them, through their abſence upon the declaration of the ſaids Maſters, without any further probation, by and attour the bodily puniſhment to be laid upon them at their returning, by the diſcretion of their ſaids Maſters: and if it ſhall happen them to be received by any other perſons, the ſaids receipters ſhall be oblieged to reſtore them again to their ſaid Maſters, within twelve hours after they be required to that effect, perſonally, or at their dwelling-places, in preſence of a Notar, and two witneſſes, and if they failyie, they ſhall pay after every requiſition, *ten ſhillings* daily, ay and whill they be reſtored, and that without prejudice to the ſaids Maſters, to call and purſue for delivery of their ſaids ſervants, before the ordinary Judge, as accords of the law, and for the damage and ſkaith ſuſtained by them, through the want of their ſaids ſervants, during the ſpace of their abſence, after the ſaid requiſition.

No. XLVII.

CHA. II, Parl. 1, 1663, c. 16 *Act concerning Beggars and Vagabonds.*

Former acts.

OUR Soveraign Lord conſidering the many laudable Acts of Parliament, made by His Majeſties Royal Prede-

ors for the relief of the Poor, and for conſtraining of gars, Vagabonds and idle Perſons to take themſelves awful Callings, that they may not be burdenſom and graceful to the Kingdom; Eſpecially the ſeventh Act he ſixth Parliament of His Majeſties Royal Grand-Fa- King *James* the ſixth of happy memory; Ordaining names of the poor of ilk Paroch, and ſuch as muſt be eſſarily ſuſtained by alms, to be taken up, and to tax ſtint the perſons within the Paroch, according to the mation of their ſubſtance without exception of perſons, ſuch weekly charges and contributions, as ſhould be ught ſufficient to ſuſtain the ſaid poor People: And the idred and ſixty eight Act of the fifteenth Parliament, of g *James* the ſixth, Ratifying the former Act: With addition, That ſtrong Beggars with their Bairns be loyed in common works, and that they ſhall continue ants therein during their lifetimes. And conſidering tenth Act of the two and twentieth Parliament of His Royal Grand-Father King *James* the ſixth, Recom- ding to all His good Subjects, to take into their ſervice r and indigent Children, declaring that they ſhall be ject to their ſaids Maſters, their Heirs and Aſſignes in kind of ſervice that ſhall be enjoyned to them, untill y paſs the age of thirty years compleat, and that they l be ſubject to their Maſters correction and chaſtiſe- it in all manner of puniſhment (life and torture ex- ted) and that if it ſhall happen, the ſaids perſons to ab- themſelves from their Maſters ſervice without their nce, not only to be lyable to bodily puniſhment at their ſters diſcretion, but that all recepters of them ſhall be dged to reſtore them to their Maſters, within twenty r hours after they be required, otherwayes to pay to ir ſaids Maſters, ten ſhillings *Scots* for ilk dayes ab- e till they be reſtored. And His *Majeſtie* conſidering, t the chief cauſe, whereby the foreſaids Acts have ven in-effectual, and that Vagabonds and idle perſons yet ſo much abound, hath been, that there were few or common Works then erected in the Kingdom, who ght take and imploy the ſaids idle perſons in their ſer- e: and that now, by His *Majeſties* Princely care, com-

CHAS. II, P. I, 1663, c. 16, POOR LAWS

Liſt of poor

Strong beg- gars and their bairns to ſerve during life.

If they de- ſert.

Erection of work- houſes

CHAS. II, P. I, 1663, C. 16, POOR LAWS

mon Works for Manufacturies of diverſe, ſorts are ſetting up in this Kingdom; Therefore His *Majeſtie*, with advice and conſent of His Eſtates of Parliament, Ratifies and Approves the foreſaids Acts of Parliament; with this addition, That it ſhall be leiſum to all perſons or Societies, who have or ſhall ſet up any Manufacturies within this Kingdom, to ſeize upon and apprehend the perſons of any Vagabonds, who ſhall be found begging, or who being Maſterleſs and out of ſervice, have not wherewith to maintain themſelves by their own means and work, and to imploy them for their ſervice as they ſhall ſee fit, the ſame being done with the advice of the reſpective Magiſtrats of the place where they ſhall be ſeized upon; And Ordains the Paroches where ſuch Vagabonds or idle perſons, as ſhall be found begging, were born; Or in caſe the place of their nativity be not known, the Paroches where they have any reſidence, haunt, or moſt reſort for the ſpace of three years immediatly preceeding their being ſo apprehended, who thereby are relieved of the burden of them, to make payment to the perſons or Societies that ſhall happen to imploy them, two ſhillings *Scots* money *per diem*, for the firſt year after they be apprehended, and one ſhilling *Scots per diem* for the next three years thereafter; the one half thereof to be payed by the Heretors of the ſeveral Paroches *reſpective*, and the other half thereof to be payed by the Poſſeſſors and Inhabitants dwelling upon the ground of each Heretor *reſpective*. Likeas, His *Majeſtie*, with advice and conſent foreſaid, Ordains the Heretors of each Paroch, or as many of them as ſhall happen to meet, upon publick intimation, made at the Paroch-Kirk upon any Sabbath at the diſſolving of the Church from the firſt Sermon, by any of the Heretors of the Paroch, or by the Imployers of the poor, to make up a ſtent Roll for maintenance of the poor in their Paroch, who ſhall be imployed, as ſaid is, at the rate aforeſaid, the one half thereof to be payed by the Heretors, either conform to the old extent of their Lands within the Paroch, or conform to the Valuation by which they laſt payed aſſeſment: or otherwayes, as the major part of the Heretors, ſo meeting, ſhall agree, Life-renters and Wod-ſetters alwayes being lyable, during their Rights as Heretors; and the other

Erection of work-houſes.

Power of manufactures to ſeize beggars.

Birth, or three years haunting.

Allowance,

how paid.

Stent roll.

half thereof to be laid upon the Tennents and Poſſeſſors, according to their means and ſubſtance. And in caſe the ſaids Heretors, being required by any perſon or Society, imploying the poor as ſaid is, ſhall failzie to make up and deliver a ſtent Roll in manner foreſaid, with power to the perſons, Societie or others intruſted by them, to charge the Heretors of each Paroch for the ſum of two ſhillings *Scots*, *per diem*, for each one of their poor, whereof they ſhall be relieved in manner foreſaid, conform to the old extent or valuation foreſaid, at the option of the perſon or Society imploying, or theſe intruſted by them; which ſtent Roll ſhall continue and ſtand for one year after the making up thereof, either by the Heretors, or in caſe of failzie, by the perſons or Societies imploying the poor, as ſaid is, and ſhall then be renewed from year to year, during the years above-written. Providing alſo, that the Heretors in caſe they failzie to make a ſtent Roll, as ſaid is, and be charged conform to the old Extent or Valuation of their Lands, that they ſhall have relief off the Tennents and poſſeſſors of their Lands, for the one half of what they ſhall be diſtreſſed for. And His *Majeſty*, with conſent foreſaid, Ordains Letters of Horning to be directed hereupon, at the inſtance of the perſons or Societies imployers of the poor, or perſons intruſted by them, againſt the Heretors and others, for payment of the ſaid daily allowance for the poor, or againſt the recepters of them, being ſo imployed, for ten ſhillings *Scots* money, *per diem*, upon fifteen dayes onely; providing always, that after examination of the caſe, the Lords of the Privy Council ſhall find cauſe for directing ſuch Letters: And ordains all Sheriffs, Stewarts, Bailies of Regality, Principality, Magiſtrats of Burroughs, or Juſtices of Peace and their Conſtables, to be aſſiſting in the apprehending of the ſaids Vagabonds, or in the bringing of them back to their ſervice, after they ſhall be imployed; And ſtrictly prohibites and Diſcharges all perſons whatſoever, to oppoſe or hinder the taking or bringing back of them in manner foreſaid *reſpective*, under the pain of deforcement. Likeas, it is hereby Declared, That the poor ſo imployed ſhall continue in the ſervice of the Imployers, and under their direction and correction, in

CHAS. II, P. I, 1663, C. 16, POOR LAWS

By whom paid.

Rate.

Heritors, how relieved.

Horning.

Magiſtrates to apprehend vagabonds.

CHAS. II, P. I, 1663, c. 16, POOR LAWS

manner foreſaid, not only during the ſpace of the maintenance, to be payed for them by their Paroches in manner above-written, but alſo for the ſpace of ſeven years thereafter for meat and cloath only; Declaring alwayes, likeas it is hereby expreſly Declared, that the Burgh of *Air* nor their inhabitants ſhal no wayes be comprehended herein, but are excepted here-from in all points. And recommends to the Lords of Privy Council, to ſee this Act and all former Acts of Parliament made againſt ſturdy Beggars and Vagabounds, put to execution, with power to them to ſupply by their order, what ſhall be deficient, as to the execution of the ſaids Acts.

No. XLVIII.

CHA. II, Parl. 2, 1672, c. 18. *ACT for eſtabliſhing Correction-houſes for Idle Beggars and Vagabonds.*

POOR LAWS

THE Kings Majeſty, conſidering the many good Laws and Statutes made by himſelf and his Royal Predeceſſors, for ſuppreſſing of Vagabonds, Beggars and Idle perſons, who are a great burden and reproach to the Kingdom, and for the moſt part, live without all Law or Rule, Sacred or Civil; And that a numerous brood of ſuch perſons are dayly increaſing, who if they were ſet to work, and bred to Trades and callings, the people might not only be diſburdened of them, but they might in a ſhort time and upon far leſs expence, become uſeful and profitable for the whole Kingdom. And with all conſidering, that the effect of all theſe good Laws hath been fruſtrat, becauſe there hath been no place provided wherein ſuch poor people might be ſet to work, nor perſons appointed to have the charge and overſight of them: For remeed whereof, His Majeſty, with advice and conſent of His Eſtates of Parliament, Statutes and Ordains, that the Magiſtrats of the Burghs following, betwixt and the term of Whitſonday next, 1673, provide Correction-houſes for receiving and entertaining of the Beggars, Vagabounds and Idle perſons within their Burghs, and ſuch as ſhall be ſent to them out

of the Shires and Bounds after-ſpecified; and that they appoint Maſters and Overſeers of the ſame, who may ſet theſe poor perſons to work; *viz.* one Correction-houſe at the Burgh of *Edinburgh*, for theſe of the Town and Shire of *Edinburgh*; one at the Burgh of *Haddingtoun*, for thoſe of the Shire of *Haddingtoun*; one at *Dunce* for the Shire of *Berwick*; one at *Jedburgh*, for the Shire of *Roxburgh*; one at the Burgh of *Selkirk*, for the Shire of *Selkirk*; one at the Burgh of *Peebles*, for the Shire of *Peebles*; one at *Glaſgow*, for the Shire of *Lanerk*; one at the Burgh of *Dumfreis*, for the Shire of *Dumfreis*; one at the Burgh of *Wigtoun*, for the Shire of *Wigtoun*; one at the Burgh of *Kirkcudbrugh*, for the Stewartry of *Kirkcudbrugh*; one at the Burgh of *Air*, for the Shire of *Air*; one at the Burgh of *Dumbartoun*, for the Shire of *Dambartoun*; one at the Burgh of *Rotheſay*, for the Shire of *Bute*; one at *Paiſly*, for the Shire of *Renfrew*; one at *Sterling*, for the Shires of *Sterling* and *Clackmannan*; one at *Linlithgow*, for the Shire of *Linlithgow*; one at *Culroſs*, for theſe twelve Paroches in the Shire of *Perth*, belonging to the Preſbetry of *Dumblane*; one at the Burgh of *Perth*, for the reſt of the Shire of *Perth*; one at *Montroſe*, for the Shire of *Kincardin*; one at the Burgh of *Aberdeen*, for the Shire thereof; one at *Innerneſſe*, for the Shires of *Innerneſſe*, *Roſe*, and *Cromarty*; one at the Burgh of *Elgin*, for the Shires of *Elgin* and *Nairn*; one at *Inverary*, for the Shire of *Argyl*; four in the Shire of *Fife*, *viz.* one at St. *Andrews*, one at *Coupar*, one at *Kirkaldy*, and one at *Dumfermling*, for the four ordinary Diviſions of that Shire; one at *Dundee* for the Shire of *Forfar*; one at the Burgh of *Bamff*, for the Shire of *Bamff*; one at the Burgh of *Dornoch*, for the Shire of *Sutherland*; one at the Burgh of *Week*, for the Shire of *Caithneſſe*; and one at the Burgh of *Kirkwall*, for the Shire of *Orkney* and *Zetland*; each of which Houſes ſhall have a large Cloſs, ſufficiently incloſed for keeping in the ſaid poor people, that they be not neceſſitat to be alwayes within doors, to the hurt or hazard of their health. And in caſe the Magiſtrats of the ſaids Burghs or any of them ſhall not provide and have in readineſs, the ſaids Correction-houſes betwixt and the ſaid term

CHAS. II., P. 2, 1672, C. 18. POOR LAWS

Correction-houſes.

CHAS. II, P. 2, 1672, C. 18, POOR LAWS

of Whitſonday next; they ſhall incur the pain and penaltie of *five hundred merks Scots* money, and that quarterly, untill the Correction-houſes be provided: Which penalties ſhall be payed to the Commiſſioners of Exciſe, in the reſpective Shires or Bounds, from which the ſaids poor perſons ſhall be ſent, to the ſaids Correction-houſes: And the ſaids Commiſſioners are hereby warranted to raiſe Letters of Horning, and uſe other execution at their inſtance, againſt the Magiſtrats of the ſaid Burghs for payment of the penalties that ſhall be incurred by them, in manner foreſaid; which penalties ſhall be applyed by the ſaids Commiſſioners, for building or buying of houſes to the effect foreſaid; And in the mean time, untill the ſaids houſes be provided, the Magiſtrats of the ſaid Burghs are required to diſpoſe of theſe Beggars and poor people, who were either born within their reſpective Burghs, or have haunted therein the laſt three years, in ſome convenient places, ſo as they may not go begging on the Streets, or at houſes within the Town. And for the better enabling of the ſaids Burghs, to bear the charges and expences of the ſaids Correction-houſes, His Majeſty, with conſent of the ſaids Eſtates of Parliament, Statutes and Ordains, that the Contributions and Allowances for maintaining of the Poor, appointed by the fifteenth Act of the third Seſſion of His Majeſties firſt Parliament, Intituled, *Act concerning Beggars and Vagabounds*, be applyed for the uſe of the ſaids Correction-houſes, whereby they ſhall have two ſhillings Scots for ilk poor perſon *per diem* that ſhall be ſent to them, and entertained and bred by them, for the firſt year, and twelve pennies Scots *per diem*, for the ſpace of three years thereafter, during which they ſhall entertain and educat them, together with the profit ariſing from the labour and work of the ſaids poor perſons, for ſeven years thereafter: Which Contributions are to be payed by the Paroches relieved of the ſaid Poor, in manner contained, in the ſaid Act. And to the effect it may be known, what poor perſons are to be ſent to the ſaids Correction-houſes, and who are to be keeped and entertained by the Contributions at the Paroch-kirks for the poor: the Miniſters of ilk Paroch, with ſome of the Elders, and in caſe of Vacancy of the kirks, three or moe of the Elders are hereby

Horning.

Interim expedient.

Allowance.

rdered to take up an exact Liſt of all the poor perſons ithin their paroches, by Name and Sur-name, conde- ending upon their age and condition, if they be able or nable to work, by reaſon of age, infirmity or deſeaſe, id where they were born, and in what Paroches they ave moſt haunted during the laſt three years, preceeding ie uptaking of theſe Liſts; intimation being alwayes ade to the whole Heretors of the Paroch to be preſent, id to ſee the Liſts right taken up; and that the Heretors ho, and the poſſeſſors of their Land, are to bear the bur- en of the maintainance of the poor perſons of each Pa- ɔch, or any of them who ſhall meet with the ſaids Mini- ers and Elders, ſhall condeſcend upon ſuch as through ge and infirmity, are not able to work, and appoint them laces wherein to abide, that they may be ſupplied by the contributions at the Paroch-kirk: And if the ſame be ot ſufficient to entertain them, that they give them a adge or Ticket to aſk almes at the dwelling-houſes of the nhabitants of their own Paroch only, without the bounds hereof, they are not to beg; and that they do not at all eſort to Kirks, Mercats, or any other places where there ıre meetings at Marriages, Baptiſmes, Burials, or upon ıy other publick occaſion. And likewiſe, that ſuch of he ſaids poor perſons as are of age and capacity to work, be firſt offered to the Heretors or Inhabitants of each Pa- ɔch, that if they will accept any of them to become their pprentices or Servants, that they may receive them up- n their oblidgment to entertain and ſet to work the ſaids oor perſons, and relieve the Paroch of them; For which ıuſe, they ſhall have the benefit of their work untill they ttain the age of thirty years, conform to the tenth Act of ıe twenty two Parliament of King *James* the ſixth, and ıat the reſt of the ſaids poor perſons be ſent to the Cor- ɛction-houſes, for whoſe entertainment, the ſaids Heretors ıall cauſe collect the Contributions, and appoint a quar- ers allowance to be ſent a long with them, with Cloaths ıpon them, to cover their nakedneſs, and the ſaid allow- ınce to be payed quarterly thereafter, by way of advance. With power alſo to the ſaids Commiſſioners of Exciſe in ɛach Shire, quarterly to take an accompt of the diligence ɔf theſe of each Paroch in performing of the premiſſes:

CHAS. II, P. 2, 1672, c. 18, POOR LAWS

Liſt of poor

Birth, and three years.

Meeting of heritors, and poſſeſſors, and ſeſſion.

Badge.

Work of the poor perſon.

CHAS. II, P. 2, 1672, C. 18, POOR LAWS

Collectors.

And in caſe of their neglect, to appoint other perſons to make the ſaids Liſts, and Collectors to uplift the ſaids Allowances, and to bring them to Correction-houſes. And the Sheriffs, their Officers, and Mayors and Conſtables are hereby required to concur and be aſſiſting to the carrying and delivering of the ſaids poor perſons to the Correction-houſes. And in caſe any Heretors ſhall find within their bounds, any other Vagabounds, Beggars or Idle perſons, not being in ſervice, not having any viſible way or ſtock to entertain themſelves, who were not born, nor did haunt formerly within their bounds; they are hereby impowered to ſeize upon ſuch perſons, and to ſend them to the Correction-houſes, and to charge the Magiſtrats or Maſters of the ſaids houſes to receive them, without advance of any allowance: With power notwithſtanding to the ſaids Magiſtrats or Maſters, to charge the Heretors of the Paroches where theſe idle perſons were born, or have moſt haunted the laſt three years, for the allowance of ſuch of them as are not bred to work; And as to ſuch of them as can work, the Maſters ſhall have the benefit of their work for their meat. And His Majeſty, with advice foreſaid, doth impower and require the Maſters of the Correction-houſes to put and hold the ſaids poor people to work, as they ſhall ſee them moſt capable and fit; And in caſe of their diſobedience, to uſe all manner of ſeverity and correction, by wheeping or otherwayes, (excepting torture), and to detaine them within the ſaid Correction-houſe and Cloſs thereof; with this proviſion, that in caſe any of the ſaids poor perſons being received, ſhall be ſuffered to eſcape to burthen the Countrey of new, that the Magiſtrats ſhall be charged to recover and receive them again, without any allowance thereafter, during the ſpace of four years, under the pain of Fourty pounds *Scots* for each perſon ſo eſcaping: With power alſo to them, to receive diſobedient ſervants, and to put them to work, and to correct them according to their demerits. Likeas His Majeſty, with advice foreſaid, Ordains Letters of Horning and other execution to paſs hereupon, at the inſtance of theſe who ſhall ſend the poor in manner foreſaid, againſt the Magiſtrats of Burghs for receiving the poor ſent to them, with the quarters allowance foreſaid: And likewiſe,

Duty of magiſtrates.

Seize vagrants.

Power over thoſe confined in correction-houſes.

of Horning to be direct at the inſtance of the Maſ- CHAS. II, P. I. 1672, C. 18, POOR LAWS
the ſaids Correction-houſes, againſt thoſe lyable in
nt of the ſaid allowance for the poor, conform to
d Act of Parliament, and that quarterly in manner
d; and at the inſtance of the Collectors, to be nam-
the Heretors or Commiſſioners of Exciſe, againſt
retors and Inhabitants of the ſaids Paroches: con-
o the ſaid Act of Parliament. It is alwayes hereby
ed, that it ſhall be lawful to Coal-Maſters, Salt- Coalmaſters, &c. power to ſeize.
s, and others who have Manufacturies in this King-
o ſeize upon any Vagabonds or Beggars, where ever
n find them, and to put them to work in their Coal-
or other Manufacturies, who are to have the ſame
of correcting them, and the benefit of their work,
Maſters of the Correction-houſes. And farther,
ajeſty, with advice foreſaid, recommends and com-
e execution of this preſent Act to His Privy Coun-
h power to them to appoint all means and wayes
king the ſame effectual; To whom the Commiſſion-
exciſe in the ſeveral Shires, are hereby Required to
an accompt of their diligence in the premiſſes, by
f their number the ſecond Council day in *November*,
e ſecond Council day in *June* yearly, under the
f Fourty pounds *Scots* for every Commiſſioner of
who ſhall be deficient in doing his part of the pre-

No. XLIX.

MARY, 1551, c. 25, (Black Acts.)

T nane be permitted to beg except in the pariſh
they were born: That the headſmen of every pa-
e badges to the Beggars thereof; and that none be
with alms but thoſe who have badges: That the
R make inquiſition, and take dittay thereupon at
uſtice; and Letters are ordained to be directed to
all officers of the Law to put this act in execution.

No. L.

WILL. and MARY, 11th Aug. 1692. *Proclamation of the Privy Council anent Beggars.*

WILLIAM and MARY, &c. to macers of our Privy Council, meſſengers at arms, our Sheriffs in that part, conjunctly and ſeverally, ſpecially conſtitute, Greeting; whereas ſeveral good Laws have been made by our Royal Predeceſſors for maintaining the Poor, and relieving the Lieges of the burden of Vagabonds: In proſecution whereof, We hereby require the Heretors, Miniſters, and Elders, of every Pariſh to meet on *the ſecond Tueſday of September* next at their Pariſh Kirk, and there to make Liſts of all the Poor within their Pariſh, and to caſt up the Quota of what may entertain them according to their reſpective Needs, and to caſt the ſaid Quota, the One Half upon the Heretors, and the other Half upon the Houſeholders of the Pariſh, and to collect the ſame in the Beginning of every Week, Month, or Quarter, as they ſhall Judge moſt fit, and to appoint Two Overſeers yearly to collect and diſtribute the ſaid Maintenance to the Poor according to their ſeveral Needs. And likewiſe to appoint an Officer to ſerve under the ſaid Overſeers for inbringing of the maintenance, and for expelling Stranger Vagabonds from the Pariſh, whoſe Fee is to be ſtented on the Pariſh as the reſt of the Maintenance for the Poor is ſtented: And ſuch Poor as are not provided of Houſes for themſelves or by their Friends, the Heretors are to provide them with Houſes on the expence of the Pariſh in manner forſaid.

Heritors, miniſters, and elders, to meet, and adjuſt the quota;

One half by the heritors, and the other half by the houſeholders.

Two overſeers and an officer.

When the poor are to be provided in houſes

AND if any Pariſh fail in providing ſufficiently for their own Poor, the Pariſh ſo failing ſhall pay the Sum of 200l. Scots, to be uplifted, a third Part to the Purſuer, and two Parts to be applied to the Maintenance of the Poor of the Praiſh; and that Monthly, *toties quoties* as they ſhall fail in their Duty. And if there be any Mortifications already, or if any hereafter ſhall accrue to any Pariſh, the

200l. monthly of penalty on each pariſh who neglect to provide for their poor;

me ſhall be applied, by the Advice of the Heretors and lders to the uſe aforeſaid, but without Diminution of the ock of the ſaids Mortifications: And the Heretors and lders are hereby appointed to have a ſecond Meeting at e ſaid Pariſh Kirks this Year on the ſecond Tueſday of ctober next for a more exact Settling of the Matter: id yearly thereafter the Heretors, Miniſters, and Elders, every Pariſh are to meet on the firſt Tueſday of Febru- y, and the firſt Tueſday of Auguſt yearly, to conſult and termine herein as ſhall be thought fit for every enſuing lf year, and to appoint Overſeers by the Year or Half ar, as they ſhall conclude.

1ST PROCLAMATION, PRIVY-COUNCIL, —CONCERNING THE POOR.

The firſt Tueſdays of February and Auguſt appointed for the half yearly meetings.

AND all the Miniſters are hereby required to give time- s Information to the Sheriff of the Shire, if any Pariſh ll fail in Performance of this Chriſtian Duty, in Whole in Part, and the Sheriff or Sheriff Depute are hereby uired to call the Delinquents before them without any lay, and if Guilty to fine them in Double the Quota ich the Miniſter ſhall atteſt to be wanting, and to cauſe ind for the ſame immediately: And where Churches are cant, that Two of the greateſt Heretors reſiding within Pariſh ſhall be appointed by the firſt Meeting in Sep- nber next, to inquire into the Duty of Pariſhioners and erſeers, and to inform the Sheriff of their Delinquency.

Miniſters to inform the ſheriffs of delinquents who are to be fined in double the ſum in which they are atteſt to be deficient.

AND if any of the Poor of the Pariſh are able to work, Heretors of the Pariſh are hereby authoriſed and re- ired to put them to Work according to their Capacities, her within the Pariſh, or in any adjacent Manufactory they ſhall find expedient, furniſhing them always with at and Cloth.

Any of the poor able to work to be employed by the heritors, either in the pariſh, or in an adjacent manufactory.

AND if any young Children be found Begging, under Age of 15 Years, any Perſon who ſhall take the ſaid ildren and bring them before the Heretors, Miniſters, l Elders, and cauſe regiſtrate the Name and Deſignation the Child in the Seſſion Book, and ſhall there enact him- to educate the ſaid Child either to Trade or Work, l take an Extract of the Act from the Clerk of the Sef- n, the ſaid Child ſhall be obliged to ſerve the ſaid Per- n, ſo educating him for Meat and Cloaths until he paſs 30th Year of his Age: And all Manufactories are de-

Children to be taken to ſervice till 30, in terms of the act 1617.

1ST PROCLAMATION, PRIVY-COUNCIL, —CONCERNING THE POOR.

clared to have the ſame Priviledge as to the Education of ſuch young Ones; and this to extend, not only to the Children of Beggars, but alſo to poor Children, whoſe Parents are dead, or with conſent of the Parents, if they be alive; And if any young Ones, about 15 Years of Age, ſhall voluntarily engage themſelves, upon the like Conditions, the ſame method is to be extended to them in every point: And if any of the young Ones, ſo educated, ſhall diſobey their Maſters, when reaſonably employed, their Maſters are hereby warranted to correct them as they judge expedient, Life and Torture excepted. And if any Perſon harbour or reſet any ſuch Servant belonging to any other, they ſhall return them to their Maſter, on demand, under the Pain of One Hundred Merks, *toties quoties* as oft as they ſhall be required ſo to do: And if any Maſter ſhall exact any inhuman or too rigid Service from any ſuch Servant, the Sheriffs, or Juſtices of Peace, upon application by the Servants, are to judge in the caſe; and if the ſeverity ſo deſerve, the Servant may be looſed from ſuch a Maſter, the Servant, or ſome for him, paying the Maſter as much Yearly as the Fee of Servants of that quality would extend to each Year, to the number of Years wanting to the 30th Year of the Servant's Age: And the Heretors meeting on the Days appointed, or Major Part of them, are authoriſed and required to conclude and determine Matters for that half Year.

Sheriff and juſtices of peace to judge in caſe of any inhuman or rigid ſervice.

Beggars to repair to their own pariſhes, under pain of impriſonment, and being fed on bread and water for a month,

and, for ſecond fault, to be marked on the face with an iron.

AND to the End that the Poor may be returned to their own Pariſhes, and the Nation freed of Vagabonds, we ſtrictly require and command all the Beggars within the Kingdom forthwith to repair to their ſeveral Pariſhes, with all diligence, and to keep the ordinary High ways to the ſame, and ſo ſoon as they come to their Pariſh, to preſent themſelves to the Heretors and Elders, that their Names may be liſted amongſt the Poor of the Pariſh, and they lodged and entertained accordingly; with Certification to all who ſhall be found Begging without the Bounds of their Pariſh after the ſaid ſecond Tueſday of September next, they ſhall be ſeized as Vagabonds, *impriſoned and fed on Bread and Water for a Month*, or till they be ſent home to their Pariſh in manner after mentioned; and if they be found vaguing a ſecond time, they are to be marked with

Iron on the Face; and all the Lieges are hereby prohi- 1ST PRO-
ted to give any Alms to ſuch Begging Vagabonds, other CLAMA-
an Bread and Water allenarly after the ſaid ſecond Tueſ- TION,
y of September until they arrive at their own Pariſhes. PRIVY-
AND to the end that our Will hereanent may be more COUNCIL,
eedily made practicable, we ſtrictly command and charge —CON-
l our Lieges within this our ancient Kingdom, to appre- CERNING
nd ſuch Beggars as they ſhall find vaguing without their THE POOR.
n Pariſh after the ſecond Tueſday of September, and All beg-
rthwith to carry them to the principal Heretor of the gars to be
riſh where they are apprehended, if it be in Landward, apprehend-
d to one of the Baillies in Towns, who ſhall examine ed by any
e Beggar in the Shire and Pariſh where he was born, of the
d ſhall direct him forthwith to the neareſt Pariſh that lieges, and
s in the road to the Pariſh of his Birth, and deliver him carried to
the neareſt Heritor that lies in that high way in the the princi-
xt Pariſh, and ſo forth from Pariſh to Pariſh in the ſame pal heritor,
ad until he arrive at the Pariſh of his nativity, who ſhall or magi-
en liſt him and entertain him amongſt the Poor: And ſtrate, who
e Heretors to whom the Vagabonds are delivered, are ſhall ſend
reby authoriſed and required to ſend two fencible Men them to the
their Pariſh to convey every Beggar to the Heretor of pariſh
e next Pariſh, and to ſend a Note of the Beggar's name where they
d the Pariſh where he was born, which is to be deliver- were born.
to the next Heretor who receives him, and every He-
tor who receives him is to return a Note ſigned of his
it, and ſo forth from Heretor to Heretor in every ſeveral
riſh. And if any of the ſaids Beggars offer to make
eir eſcape in their tranſportation, the Beggar ſo doing
ll be ſcourged and fed with bread and water during the
ſt of his Journey: And whoever gives alms to any Penalty on
ggar not in their Pariſh after the ſecond Tueſday of Sep- thoſe giv-
mber, and ſhall not ſeize him in order to his tranſporta- ing alms,
on, as ſaid is, ſhall be fined in 20 ſhillings Scots *toties quo-* and diſ-
s, to be uplifted by the Overſeers, and applied to the uſe obeying the
the Poor of the Pariſh; And if the Heretor to whom act.
e Vagabond ſhall be brought, fail in his duty of ſending Penalty on
m, he ſhall be fined in 20 pounds Scots *toties quoties*, to the heritor
e applied as ſaid is; if any fencible man, ſent to convey diſobeying.
em, refuſe or fail in his duty, he is to be fined in two
erks Scots *toties quoties*, to be applied as ſaid is; and the

1ST PROCLAMATION, PRIVY-COUNCIL, —CONCERNING THE POOR.

ſaid fencible men are to be choſen by turns in the ſaid Pariſhes.

AND whereas by act 18, ſeſſion 3, Parliament 2, Charles II, Correction-houſes are appointed to be erected in ſeveral Burghs therein mentioned, for employing of poor people in work as they are capable, which have been hitherto too much neglected (until the leſſer Burghs be able to perform what is there required, leſt ſo good a deſign ſhould totally fail), we hereby ſtrictly require our Burghs of *Edinburgh*, *Stirling*, *Dundee*, *Aberdeen*, *Invernes*, *Glaſgow*, *Jedburgh*, *Dumfries*, and *Cupar* in *Fife*, or ſuch of them as have not already eſtabliſhed Correction-houſes, in manner and to the ends preſcribed by the ſaid act to erect and eſtabliſh ſuch Houſes, and to receive ſuch Poor for Work therein as ſhall be ſent to them from any Pariſh, in manner and on the conditions preſcribed by that act and this, but prejudice of erecting of Correction-houſes in other Burghs therein mentioned with all Conveniency. Our will is, herefore, and we charge you ſtrictly, and command that incontinent theſe our letters ſeen, ye paſs to the market Croſs of Edinburgh, and to the Market Croſſes of the whole head Burghs of the ſeveral Shires of this Kingdom, and there, in our name and authority, by open proclamation, make publication of the premiſſes, that none pretend ignorance: And ordains theſe preſents to be printed.

Correction-houſes to be built in ſome of the principal burghs, without prejudice to the other burghs doing ſo alſo.

Given under our Signet, at Edinburgh, the 11th Auguſt, and of our Reign the 4th year 1692.

Per actum Dominorum Secreti Concilii. In ſupplementum ſigneti. (Sic ſubſ.) DA. MONCRIEFF, Cls. Sec. Concilii.

God ſave King William and Queen Mary.

No. LI.

id MARY, 29th Aug. 1693. *A Proclamation of the Privy Council anent Beggars.*

AM and MARY, &c.; Forasmuch as the Intent and of our Proclamation, of date 11th Auguſt 1692, ; all Beggars within this Kingdom forthwith to their ſeveral Pariſhes with all Diligence, hath ch diſappointed and fruſtrated by the uncertainty 'ariſhes where the ſaid reſpective Beggars have n, and for want of ſuitable Proviſion made by the and Magiſtrates of the reſpective Pariſhes where Beggars have been born, or had their laſt ſeven idence: for remeid whereof, we, with the advice ords of our Privy Council, ſtrictly require and l all the Beggars within this Kingdom immediate- air to the ſeveral Pariſhes where they were born, the Pariſh or place of their birth is not certain tly known, that they repair to the Pariſhes where reſided for the ſpace of ſeven years together, and the ordinary Highways to the ſeveral Pariſhes of th, or laſt ſeven years reſidence; and ſo ſoon as ie to the ſaid reſpective Pariſhes, to preſent them- the Heretors and Elders, and where Pariſhes are nd have no Elders, to the Heritors alone, whom advice foreſaid, require and command to make iſions neceſſary for the ſaid Beggars, and to liſt mes among the Poor of the Pariſh, that they may l and entertained accordingly, with certification to hall be found Begging after the *ſecond Tueſday of* r next, they ſhall be ſeized as Vagabonds, impriſ- l fed with bread and water for a month, or till ſent home to the reſpective Pariſh of their birth, ven years reſidence, in manner mentioned in our ier Proclamation; And we, with advice foreſaid, and command the Magiſtrates of our Burghs Royal and ſtent themſelves conform to ſuch order and

Beggars to go to the pariſhes where they were born, or if that be unknown, where they reſided for the laſt ſeven years.

Puniſhment of beggars.

Magiſtrates to ſtent the burghs, and heretors the vacant pariſhes.

2D PROCLAMATION, —CONCERNING THE POOR.

cuſtom, uſed and wont, in laying on ſtents, annuities, or other public burdens, in the reſpective Burgh, as may be moſt effectual to reach all the Inhabitants: And the Heretors of the ſeveral vacant Pariſhes likewiſe to meet and ſtent themſeves for the maintenance of their ſaid reſpective Poor; and to appoint the ingathering, uplifting, and applying, of the ſame for the uſes foreſaid, ſicklike and in the ſame manner as the Heretors and Elders are appointed by our ſaid former Proclamation; And all the Miniſters and Heretors are hereby required to give timeous intimation to the Sheriff of the Shire, if any Pariſh or perſon ſhall fail in performance of this Chriſtian duty in hail or in part, and the Sheriff, or Sheriff Depute, are hereby required to call the Delinquents before them without any delay; and if guilty, to fine them in double of the quota, which the Miniſter or Heritors ſhall atteſt to be wanting, and to cauſe poind for the ſame immediately. And, further, for preventing of any queſtion that may ariſe betwixt the Heretors and Kirk Seſſion in the ſeveral Pariſhes of this Kingdom about the Quota of the Collections at the Church doors, and otherwiſe to be made by the ſaid Seſſion to be paid into the Heretors for the end foreſaid, we do hereby, with advice foreſaid, determine the ſame to be the half of the ſaid Collections, and ordains the ſaid Kirk Seſſion to pay in the ſame from time to time to the ſaid Heretors, or any to be by them appointed accordingly; and we ordain our ſaid former Proclamation to ſtand in full force, &c. and to be put in Execution in ſo far as the ſame is not hereby altered.

Miniſters and Heretors to inform againſt delinquents whom the ſheriff is to fine in double, and poind.

One half of the collection to be given by the kirk-ſeſſion to the heretors for the foreſaid ends.

Given at Edinburgh, 29th Auguſt, and of our Reign the 5th year, 1693.

No. LII.

1 MARY, 31ſt July 1694. *A Proclamation for former Acts and Proclamations anent Beggars in ion, anno* 1694.

AM and MARY, &c.; Foraſmuch as many good e been made by our Royal Predeceſſors for main- ie Poor and relieving the Lieges from Vagabonds, ution whereof ſeveral Proclamations have been by our Privy Council, for the better putting the in Execution, notwithſtanding whereof due obe- th not been hitherto given to the ſame, ſo that are not duly provided for, nor the Vagabonds re- n many Places, Therefore we hereby require and the Miniſters, Heretors, and Elders of every Pa- Houſeholders and Inhabitants within the ſame e, to follow forth and give ready obedience to of Parliament and Proclamations of our Privy already made; And further, we, with advice fore- uire and command the Sheriffs of the ſeveral nd their Deputes, Juſtices of Peace, and Magi- the Royal Burghs of this Kingdom, within their uriſdictions, to take trial how far and in what he ſaid Acts of Parliament and Proclamations of have been obeyed and put to Execution conform nors thereof; and where any have neglected, or cient and wanting in what is required of them by Acts and Proclamations, to amerciate and fine erefore in manner therein ſpecified; And if any ſhall happen in the after proſecution thereof, what Cauſe or occaſion ſoever, not provided for aid Laws and Proclamations, the Magiſtrates re- foreſaid are hereby required to repreſent the ſame ords of our Privy Council, that they may give er thereanent as may bring this good work of re- he Poor, and reſtraining Vagabonds to the deſired

Sheriffs and juſtices of peace and magiſtrates to fine delinquents,

and in caſes of difficulty to repreſent the matter to the court of ſeſſion.

2D PROCLAMATION, —CONCERNING THE POOR.

iſſue; for the better effectuating whereof, we, with advice foreſaid, Nominate and appoint a Committee of the Lords of our Privy Council to receive in any Repreſentation from the Magiſtrates reſpective above named; And likewiſe with power to them to call and convene before them the Sheriffs and other Magiſtrates reſpective aforeſaid, to whom the execution of the ſaid Acts and Proclamations are committed, and particularly the Magiſtrates of Edinburgh, and to examine and take trial of their negligence in the ſaid matter, and to modify the Fines and Penalties to be exacted from them for the ſame, and to report their Opinion therein to a full Council the firſt Council day of September next. Our will is herefore, &c.

Given at Edinburgh, the laſt day of July 1694.

No. LIII.

WILLIAM, 3d March 1698. *A Proclamation anent the Poor.*

WILLIAM, &c. That where the many good and laudable Laws made for maintaining the Poor, and ſuppreſſing of Beggars, Vagabonds, and idle Perſons, have not hitherto taken effect, partly becauſe there were no Houſes provided for them to reſide in, and partly becauſe the perſons to whom the Execution of theſe Laws was Committed have been negligent of their duty; for remeid whereof, we, with the advice of the Lords of our Privy Council, ordain the Proclamations formerly emitted, of the date the 11th Auguſt 1692, the 29th Auguſt 1693, and laſt of July 1694, Ratified and Approven by Act 29, ſeſſion 6, of our current Parliament, to be reprinted and put to full and vigorous Execution in all points: And in order to make the ſaid Proclamations the more effectual, We, with advice foreſaid, revive Act 18, ſeſſion 3, Parl. 11, Charles II, in ſo far as concerns the providing Correction Houſes for the receiving and entertaining of Beggars, Vagabonds, and idle Perſons, within the Burghs therein mentioned, *viz.* one Correction Houſe at the Burgh of *Edinburgh*, for

Correction-houſes to be built in terms of the act 1672.

or thoſe of the Town and Shire of *Edinburgh*; one at the Burgh of *Haddington*, for thoſe of the Shire of *Haddington*; one at *Dunſe* for the Shire of *Berwick*; one at *Jedburgh*, for the Shire of *Roxburgh*; one at the Burgh of *Selkirk*, for the Shire of *Selkirk*; one at the Burgh of *Peebles*, for the Shire of *Peebles*; one at *Glaſgow*, for the Shire of *Lanark*; one at the Burgh of *Dumfries*, for the Shire of *Dumfries*; one at the Burgh of *Wigton*, for the Shire of *Wigton*; one at the Burgh of *Kirkcudbright*, for the Stewartry of *Kirkcudbright*; one at the Burgh of *Ayr*, for the Shire of *Ayr*; one at the Burgh of *Dumbarton*, for the Shire of *Dumbarton*; one at the Burgh of *Rothſay*, for the Shire of *Bute*; one at *Paiſley*, for the Shire of *Renfrew*; one at *Stirling*, for the Shires of *Stirling* and *Clackmannan*; one at *Linlithgow*, for the Shire of *Linlithgow*; one at *Culroſs*, for theſe twelve Pariſhes in *Perthſhire*, belonging to the Preſbytery of *Dunblane*; one at the Burgh of *Perth*, for the reſt of the Shire of *Perth*; one at *Montroſe*, for the Shire of *Kincardine*; one at the Burgh of *Aberdeen*, for the Shire thereof; one at *Inverneſs*, for the Shires of *Inverneſs*, *Roſs*, and *Cromarty*; one at the Burgh of *Elgin*, for the Shires of *Elgin* and *Nairn*; one at *Inverary*, for the Shire of *Argyle*; four in the Shire of *Fife*, viz. one at St. *Andrews*, one at *Coupar*, one at *Kirkaldy*, and one at *Dunfermline*, for the four ordinary Diviſions of that Shire; one at *Dundee* for the Shire of *Forfar*; one at *Banff* for the Shire of *Banff*; one at the Burgh of *Dornoch*, for the Shire of *Sutherland*; one at *Wick*, for the Shire of *Caithneſs*; and one at *Kirkwall*, for the Shires of *Orkney* and *Zetland*; each of which Houſes ſhall have a large Croſs, ſufficiently incloſed for keeping in the ſaid poor People, that they be not neceſſitate to be always within Doors, to the hurt or hazard of their health: And ordains the ſaid Magiſtrates of the ſaid Burghs to provide the Correction Houſes, and appoint Maſters and Overſeers for the ſame, by advice of the Preſbytery, or ſuch as they ſhall appoint, who may ſet theſe poor perſons to work, and that betwixt and the 1ſt day of October next, under the pain of 500 Merks quarterly, until Correction Houſes be provided conform to the ſaid Act.

2D PROCLAMATION, —CONCERNING THE POOR.

2D PROCLAMATION, —CONCERNING THE POOR.

BUT in place of the Commiſſioners of Exciſe, mentioned in the ſaid Act, we, with advice foreſaid, require and command the Sheriffs of the Shires and their Deputes, to put the ſaid Act in Execution within their reſpective Shires, as to every thing that by the ſaid Act was Committed to the Commiſſioners of Exciſe; And ordains the ſaid Sheriffs and their Deputes to give account of their Diligence herein, betwixt and the 1ſt of December, under the pain, every one of them, of 500 Merks, who ſhall failzie and neglect to do the ſamen, to be employed for the uſe of the Poor of the Shire; and to be liable in 100l. weekly, after the ſaid day before they return an account of their Diligence to our Privy Council, to be employed for the uſe forſaid.

Sheriffs veſted in the powers given by act 1672 to commiſſioners of exciſe, to account for their diligence.

AND ordains the ſeveral Pariſhes within every Shire and Diſtrict, to ſend their Poor to the Magiſtrates of the Towns where the Correction Houſes are to be provided, againſt the 1ſt day of November next, that they may be put into the ſaid Correction Houſes; And in caſe the Correction Houſes be not ready to ſerve the Poor againſt the ſaid Day, Ordains the Poor to be ſent to be maintained by the Magiſtrates of the Burgh who were to provide the ſaid Correction Houſes, and that ay and while the Correction Houſes be provided; and that by and attour the foreſaid Penalties impoſed by the ſaid Act of Parliament, in caſe of failzie of providing the ſaid Correction Houſes againſt the ſaid Day. And in the mean time, before the ſaid Correction Houſes be provided, ordains the ſaid Acts and Proclamations of our Privy Council to be put to full Execution.

Poor to be received in the correction-houſes, or otherwiſe maintained by the magiſtrates.

AND becauſe there may ſome queſtions ariſe in putting the ſaid Acts in Execution, for which there can be no general Rule ſet down, in reſpect of the different conditions and circumſtances of ſeveral places of the Country; therefore, that the ſaid Act may be more effectually, and with greater expedition put to Execution, we, with advice foreſaid, give power and warrant to the Miniſters and Elders of each Pariſh, with advice of the Heretors, or ſo many of them as ſhall meet and concur with the Miniſters and Elders, upon intimation to be made by the Miniſter from the Pulpit upon the Sabbath day before, to decide and de-

Miniſters, elders, and heretors, to determine doubtful queſtions with reſpect to the poor.

mine all queſtions that may ariſe in the reſpective Pa- 4TH PRO-
ſhes, in relation to the ordering and diſpoſing of the Poor, CLAMA-
ſo far as is not determined by the Laws and Acts of TION,
Parliament, and the former Acts of our Privy Council CONCERNING
which are ratified by the Act of Parliament forſaid. Our THE POOR.
will is, herefore, and we charge you ſtrictly, and com-
mand that incontinent theſe our letters ſeen, ye paſs to the
market Croſs of Edinburgh, and remanent Market Croſſes
of the head Burghs of the ſeveral Shires and Stewartries
within this Kingdom; and thereat, in our name and au-
thority, by open Proclamation, make Intimation hereof
that none may pretend ignorance: And ordain theſe pre-
ſents to be printed.

Given under our Signet, at Edinburgh, the 3d March, and of our Reign the 9th year 1698.

Per actum Dominorum Secreti Concilii. In ſupplementum ſigneti. (Sic ſubſ.) GILB. ELLIOT, *Cls. Sec. Concilii.*

God ſave the King.

No. LIV.

44 GEO. III, c. 92, 20th July 1804, intitled, *An Act to render more eaſy the apprehending, and bringing to trial, Offenders eſcaping from one Part of the United Kingdom to the other, and alſo from one County to another.*

2, AND be it further enacted, That no action of treſpaſs, falſe impriſonment, or indictment, or other action, ſhall be brought, ſued, commenced, or proſecuted, by any perſon or perſons whatever, againſt the Juſtice or Juſtices who ſhall indorſe ſuch warrant, for or by reaſon of his or their indorſing ſuch warrant: Provided always, that ſuch perſon or perſons ſhall be at liberty to bring or proſecute his or their action or ſuit againſt the Juſtice or Juſtices who originally granted ſuch warrant, in the ſame manner as ſuch perſon or perſons might have done in caſe this act had not been made. No action againſt the judge indorſing the warrant.

GEO. III, 44, C. 92. FOR TRYING ENGLISH AND IRISH OFFENDERS.

3, AND whereas it may frequently happen, that felons, and other malefactors, in that part of the United Kingdom called Ireland, make their eſcape into that part of the United Kingdom called Great Britain; as alſo that felons, and other malefactors, in that part of the United Kingdom called Great Britain, may make their eſcape into that part of the United Kingdom called Ireland, where, by their offences, often remain unpuniſhed, there being no ſufficient proviſion by the Laws now in force in Great Britain and Ireland reſpectively for apprehending ſuch offenders, and tranſmitting them into that part of the United Kingdom in which their offences were committed: for remedy whereof, be it further enacted, That from and after the 1ſt Auguſt 1804, if any perſon or perſons, againſt whom a warrant ſhall be iſſued by any of the Judges of his Majeſty's Court of King's Bench, or any Juſtice of Oyer and Terminer, or Jail delivery, or any Juſtice or Juſtices of the Peace, or other perſon having authority to iſſue the ſame within Ireland, for any crime or offence againſt the Laws in force in Ireland, ſhall eſcape, go into, reſide, or be in any place in England or Scotland reſpectively, it ſhall, and may be lawful for any Juſtice of the Peace of the County, Stewartry, Riding, Diviſion, City, Liberty, Town, or Place, in England or Scotland reſpectively, whether or where ſuch perſon or perſons ſhall eſcape, go into, reſide, or be, to indorſe his name on ſuch warrant; which warrant ſo indorſed ſhall be a ſufficient authority to the perſon or perſons bringing ſuch warrant, and to all perſons to whom ſuch warrant was originally directed, and alſo to all Conſtables, or other peace Officers of the County, Stewartry, Riding, Diviſion, City, Liberty, Town, or Place, where ſuch warrant ſhall be ſo indorſed, to execute the ſaid warrant in the County, Riding, Diviſion, City, Liberty, Town, or Place, where it is ſo indorſed, by apprehending the perſon or perſons againſt whom ſuch warrant is granted, and to convey him, her, or them, by the moſt direct way into Ireland, and before one of the Juſtices of the Peace of the County in Ireland, living near the place, and in the County, where he, ſhe, or they, ſhall arrive and land; which Juſtice of the Peace is hereby re-

Indorſing of warrants

quired to proceed with regard to such person or persons, as if the said person or persons had been legally apprehended in the said County in Ireland. GEO. III, 44, c. 92, FOR TRYING ENGLISH AND IRISH OFFENDERS.

4, AND for remedy of the like inconveniency, by the escape into Ireland of persons guilty of crimes in England or Scotland respectively, be it further enacted, that from and after 1st August 1804, if any person or persons, against whom a warrant shall be issued by any of the Judges of his Majesty's Court of King's Bench, or of the Courts of Great Sessions in Wales, or any Justice of Oyer and Terminer, or Jail Delivery, or any Justice or Justices of the Peace of any County, Stewartry, Riding, Division, City, Liberty, Town, or Place, within England or Scotland respectively, or other person having authority to issue the same within England or Scotland respectively, for any crime or offence against the Laws of England or Scotland respectively, shall escape, go into, reside, or be in any place of that part of the United Kingdom called Ireland, it shall and may be lawful for any Justice of the Peace of the County or place in Ireland, whither or where such person or persons shall escape, go into, or reside, or be, to indorse his name on such warrant; which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all Sheriffs, Officers, Constables, and other peace Officers of the County or place in Ireland, where such warrant shall be so indorsed, to execute the said warrant in the County or place in Ireland where it is so indorsed, by apprehending the person or persons against whom such warrant may be granted, and to convey him, her, or them, by the most direct way into England or Scotland respectively, and before one of the Justices of Peace of the County or Stewartry in England or Scotland respectively, being near the place, and in the County, where he, she, or they, shall arrive and land; which Justice of Peace is hereby authorised and required to proceed with regard to such person or persons as if such person or persons had been legally apprehended in the said County or Stewartry of England or Scotland respectively. Escaping into Ireland

5, AND be it further enacted, that the expence of re-

GEO. III, 44, c. 92, FOR TRYING ENGLISH AND IRISH OFFENDERS.

moving priſoners as aforeſaid in England, Scotland, and Ireland, reſpectively, ſhall be repaid to the perſon defraying the ſame, by the treaſurer of the County in England or Ireland reſpectively, or by the Sheriff, or Stewart Depute or Subſtitute of the County or Stewartry in Scotland in which the crime was committed; the amount of ſuch expence being previouſly aſcertained by an account thereof, verified upon oath, before two of the Juſtices of the Peace of ſuch County or Stewartry, and allowed and ſigned by them, and ſuch Treaſurer, Sheriff, or Stewart Depute or Subſtitute, ſhall be allowed ſuch payments on their reſpective accounts.

Expences, how allowed.

6, AND be it further enacted, That the Treaſurers of the ſeveral Counties in Ireland who have paid the amount of any ſuch Expences ſo aſcertained as aforeſaid, ſhall lay the ſaid account, together with the allowance of the ſame, ſo ſigned as aforeſaid before the Grand Juries of their reſpective Counties, at the aſſizes holden for ſuch Counties next after ſuch expences ſhall be paid, or at any ſubſequent aſſizes; and it ſhall be lawful for ſuch Grand Juries, and they are hereby reſpectively required to preſent a ſum, equal to the amount of ſuch expences, to be raiſed from the County at large for the purpoſe of reimburſing ſuch Treaſurers.

Trials to be in the place of detection

7, AND whereas it frequently happens, that perſons having ſtolen, or otherwiſe feloniouſly taken away, Money, Cattle, Goods, or other Effects, in one of the parts of the United Kingdom, carry the ſame into another part of the ſaid United Kingdom, and there have the ſaid Money, Cattle, Goods, or other Effects, in their poſſeſſion or cuſtody, and doubts may be entertained whether they could be indicted and tried in that part of the United Kingdom where ſuch offenders have the ſaid Money, Cattle, Goods, and other Effects, in their poſſeſſion or cuſtody, as the original offence was not committed in ſuch part of the ſaid United Kingdom; be it therefore further enacted and declared, That from and after the 1ſt Auguſt 1804, if any perſon or perſons, having ſtolen, or otherwiſe feloniouſly taken Money, Cattle, Goods, or other Effects, in any one of the parts of the ſaid United Kingdom, ſhall afterwards have the ſame Money, Goods, Chattels, or other Effects, or any

part thereof, in his, her, or their, poſſeſſion or cuſtody, in any other part of the United Kingdom, it ſhall and may be lawful to indict, try, and puniſh, ſuch perſon or perſons for theft, or larceny, in that part of the United Kingdom where he, ſhe, or they, ſhall ſo have ſuch Money, Cattle, Goods, or other Effects, in his, her, or their, poſſeſſion or cuſtody, as if the ſaid Money, Cattle, Goods, or other Effects, had been ſtolen in that part of the United Kingdom. GEO. III, 44. c. 92, FOR TRYING ENGLISH AND IRISH OFFENDERS.

8, AND be it further enacted, That if any perſon or perſons, in any one of the parts of the United Kingdom, ſhall hereafter receive, or have any Cattle, Goods, or other Effects, ſtolen, or otherwiſe feloniouſly taken, in any other part of the United Kingdom, knowing the ſame to have been ſtolen, or otherwiſe feloniouſly taken, every ſuch perſon or perſons ſhall be liable to be indicted, tried, and puniſhed, for ſuch offence in that part of the United Kingdom where he, ſhe, or they, ſhall ſo receive or have the ſaid Cattle, Goods, or other Effects, in the ſame manner to all intents and purpoſes, as if the ſaid Cattle, Goods, or other Effects, had been originally ſtolen, or otherwiſe feloniouſly taken, in that part of the United Kingdom in which ſuch perſon ſhall ſo receive or have ſuch Cattle, Goods, or other Effects, reſpectively. or where the ſtolen goods are feloniouſly received.

No. LV.

GEO. II, c. 5, 1741. *An Act to amend and make more effectual the Laws relating to Rogues, Vagabonds, and other idle and diſorderly Perſons, and to Houſes of Correction.*

1, WHEREAS the Number of Rogues, Vagabonds, Beggars, and other idle and diſorderly Perſons daily increaſes, to the great Scandal, Loſs, and Annoyance of the Kingdom; for Remedy thereof, be it enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That all Perſons who threaten to run away Particular offences, and their puniſhments.

GEO. II, 17TH, C. 5, VAGRANT ACT.

and leave their Wives or Children to the Pariſh; and all Perſons who ſhall unlawfully return to ſuch Pariſh or Place from whence they have been legally removed by Order of Two Juſtices of the Peace, without bringing a Certificate from the Pariſh or Place whereunto they belong; and alſo all Perſons who, not having wherewith to maintain themſelves, live idle without Employment, and refuſe to work for the uſual and common Wages given to other Labourers in the like Work, in the Pariſhes or Places where they then are; and alſo all Perſons going about from Door to Door, or placing themſelves in Streets, Highways, or Paſſages, to beg or gather Alms in the Pariſhes or Places where they dwell, ſhall be deemed idle and diſorderly Perſons; and it ſhall and may be lawful for any Juſtice of the Peace to commit ſuch Offenders (being thereof convicted before him, by his own View, or by their own Confeſſion, or by the Oath of one or more credible Witneſs or Witneſſes) to the Houſe of Correction, there to be kept to hard Labour for any Time not exceeding One Month: And it ſhall and may be lawful for any Perſon to apprehend, and carry before a Juſtice of the Peace, any ſuch Perſons going about from Door to Door, or placing themſelves in Streets, Highways, or Paſſages, to beg or gather Alms in the Pariſhes or Places where they dwell; and if they ſhall reſiſt, or eſcape from the Perſon apprehending them, they ſhall be ſubject to the ſame Puniſhment as Rogues and Vagabonds are made liable to by this Act: And it ſhall and may be lawful for the ſaid Juſtice, by Warrant under his Hand and Seal, to order any Overſeer of the Poor of the Pariſh or Place where ſuch Offender ſhall be apprehended, to pay the Sum of Five Shillings to any Perſon or Perſons in any ſuch Pariſh or Place ſo apprehending them, for every Offender ſo apprehended; which Sum ſhall be allowed to ſuch Overſeer in his Account, he producing the Juſtices Order, and a Receipt under the Hand of the Perſon or Perſons to whom ſuch Sum was paid: But if ſuch Overſeer ſhall neglect or refuſe to pay the ſaid Sum, the ſaid Juſtice, on Oath thereof made, may, by Warrant under his Hand and Seal, order the ſame to be levied by Diſtreſs and Sale of the Goods of ſuch Overſeer; and the Overplus (if any) after the Charges of

Offences of a higher nature.

Five ſhillings of reward for apprehending offenders.

Penalty for not paying the reward.

ch Diſtreſs ſatisfied, ſhall be returned to ſuch Overſeer, ho in ſuch Caſe ſhall not be allowed the Sum ſo levied in s Account. GEO. II, 17TH, C. 5, VAGRANT ACT.

2, AND be it further enacted by the Authority afore-id, That all Perſons going about as Patent-gatherers, or atherers of Alms, under Pretences of Loſs by Fire, or her Caſualty; or going about as Collectors for Priſons, ils, or Hoſpitals; all Fencers and Bearwards; all com-on Players of Interludes; and all Perſons who ſhall for ire, Gain, or Reward, act, repreſent, or perform, or cauſe be acted, repreſented, or performed, any Interlude, Tra-dy, Comedy, Opera, Play, Farce, or other Entertain-ent of the Stage, or any Part or Parts therein, not being thoriſed by Law; all Minſtrels, Jugglers; all Perſons etending to be Gypſies, or wandering in the Habit or rm of Egyptians, or pretending to have Skill in Phy-gnomy, Palmeſtry, or like crafty Science, or pretending tell Fortunes, or uſing any ſubtil Craft to deceive and poſe on any of His Majeſty's Subjects, or playing or :ting at any unlawful Games or Plays; and all Perſons io run away and leave their Wives or Children, where-they become chargeable to any Pariſh or Place; and all tty Chapmen and Pedlars wandering abroad, not being ly licenced, or otherwiſe authorized by Law; and all rſons wandering abroad, and lodging in Alehouſes, Barns, it-houſes, or in the open Air, not giving a good Account themſelves; and all Perſons wandering abroad and beg-ıg, pretending to be Soldiers, Mariners, Seafaring Men, pretending to go to Work in Harveſt; and all other Per-ns wandering abroad and begging, ſhall be deemed Rogues d Vagabonds within the true Intent and Meaning of this ct. Other of-fences, and their pu-niſhments.

3, PROVIDED always, That this Act, or any thing here-contained, ſhall not extend, or be conſtrued to extend, Soldiers wanting Subſiſtence, having lawful Certificates ɔm their Officers or the Secretary at War, or to Marin-ɜ or Seafaring Men licenſed by ſome Teſtimonial or riting under the Hand and Seal of ſome Juſtice of the ace, ſetting down the Time and Place of their Landing Diſcharge, and the Place to which ſuch Soldiers or Ma-ıers are to paſs, and the Names of the chief Towns or Proviſo.

GEO. II, 17TH, C. 5, VAGRANT ACT.

Places through which they are to paſs, and limiting the Time of ſuch their Paſſage while they continue in the direct Way to the Place to which they are to paſs, and during the Time ſo limited; or to any Perſon or Perſons going abroad to work at any lawful Work in the Time of Harveſt, ſo as he, ſhe, or they carry with him, her, or them a Certificate in Writing, ſigned by the Miniſter and one of the Churchwardens or Chapelwards, or one of the Overſeers of the Poor for the time being, of the Pariſh, Chapelry, or Place, where they ſhall reſpectively inhabit, declaring that he, ſhe, or they, hath or have a Dwelling-houſe, or Place there, in which he, ſhe, or they, inhabit.

Incorrigible rogues.

4, AND be it further enacted by the Authority aforeſaid, That all End-gatherers offending againſt an Act made in the Thirteenth Year of His late Majeſty King *George* the Firſt, intituled, *An Act for the better Regulation of the Woollen Manufacture, and for preventing Diſputes among the Perſons concerned therein; and for limiting a Time for proſecuting for the Forfeiture appointed by an Act of the Twelfth Year of His Majeſty's Reign, in caſe of Payment of the Workmen's Wages in any other Manner than in Money*, being convicted of ſuch Offence; and all Perſons apprehended as Rogues and Vagabonds, and eſcaped from the Perſons apprehending them, or refuſing to go before a Juſtice or Juſtices of the Peace, or to be examined upon Oath before ſuch Juſtice or Juſtices, or refuſing to be conveyed by any ſuch Paſs as is herein after directed, or knowingly giving a falſe Account of themſelves on ſuch Examination, after Warning given them of their Puniſhment; and all Rogues or Vagabonds who ſhall break or eſcape out of any Houſe of Correction, before the Expiration of the Term for which they were committed or ordered to be confined by virtue of this Act; and all Perſons who, after having been puniſhed as Rogues and Vagabonds, and diſcharged, ſhall again commit any of the ſaid Offences, ſhall be deemed incorrigible Rogues within the true Intent and Meaning of this Act.

Any perſon may apprehend offenders.

5, AND be it further enacted by the Authority aforeſaid, That if any Perſons ſhall be found offending againſt this Act, it ſhall and may be lawful for any Perſon whatſoever, to apprehend the Perſon ſo offending, and to con-

vey, or cauſe to be conveyed to ſome Juſtice of the Peace, the Perſons ſo apprehended, to be proceeded againſt in ſuch Manner as is herein after directed: And in caſe any Conſtable, or other ſuch Officer, ſhall refuſe or neglect to uſe his beſt Endeavours to apprehend or convey to ſome Juſtice of the Peace any ſuch Offender; it ſhall be deemed a Neglect of Duty in ſuch Conſtable or Officer, and he ſhall be puniſhed in ſuch Manner as is herein after directed: And in caſe any other Perſon, being charged by any Juſtice of the Peace ſo to do, ſhall refuſe or neglect to uſe his beſt Endeavours to apprehend and deliver to the Conſtable, or ſuch other Officer, or to carry ſuch Offender before ſome Juſtice of the Peace, where no Conſtable or other ſuch Officer can be found; ſuch Perſon ſo offending, as aforeſaid, being thereof convicted upon View, or by the Oath of One or more credible Witneſs or Witneſſes, before One or more Juſtice or Juſtices of the Peace, ſhall forfeit the Sum of Ten Shillings, to the Uſe of the Poor of the Pariſh or Place wherein ſuch Offence ſhall be committed; to be levied by Diſtreſs and Sale of the Offender's Goods, by Warrant from any Juſtice or Juſtices; and the Overplus (if any) after the Charges of ſuch Diſtreſs ſatisfied, ſhall be returned to ſuch Offender: And in caſe any Perſon not being a Conſtable, or ſuch other Officer, ſhall apprehend any ſuch Rogue or Vagabond, and ſhall deliver him or her to a Conſtable, or other ſuch Officer, or ſhall convey, or cauſe him or her to be conveyed to ſome Juſtice or Juſtices of the Peace, according to the Directions of this Act; or if any Conſtable, or other ſuch Officer, ſhall ſo apprehend and convey ſuch Rogue or Vagabond, it ſhall and may be lawful for ſuch Juſtice or Juſtices to reward any ſuch Conſtable or other Perſon, by making an Order under Hand and Seal upon the High or Chief Conſtable, to pay the Sum of Ten Shillings to the Perſon ſo apprehending him or her, within one Week after Demand, and producing ſuch Order, and upon his giving a Receipt for the ſame; and the ſame ſhall be allowed or paid by the Treaſurer of the County, Riding, Diviſion, or Liberty, to ſuch High or Chief Conſtable on his paſſing his Accounts, and delivering ſuch Order and Receipt, and alſo his own Receipt for the ſame, to ſuch Treaſurer; and the ſaid Juſti-

GEO. II, 17TH, C. 5, VAGRANT ACT.

Officers neglecting their duty.

Reward for apprehending vagrants, &c.

GEO. II, 27TH, C. 5, VAGRANT ACT.

ces at the General or Quarter Seſſions, ſhall allow the ſame to ſuch Treaſurer in his Accounts, upon his producing and delivering up the Vouchers aforeſaid: And in Cities, Boroughs, Towns-corporate, and other Places where there are no High or Chief Conſtables, ſuch Petty Conſtables and other Officers ſhall pay or retain ſuch Reward, as aforeſaid, and be allowed what they ſhall ſo pay or retain by virtue of this Act in their reſpective Accounts, upon their producing and delivering up the like Vouchers: And in caſe any High or Chief Conſtable, or where there is no High or Chief Conſtable, ſuch Petty Conſtable, or other Officer, ſhall refuſe or neglect to pay ſuch Reward on Demand, it ſhall and may be lawful for ſuch Juſtice or Juſtices of the Peace, by Warrant under Hand and Seal, to levy the Sum of Twenty Shillings, by Diſtreſs and Sale of the Goods of ſuch Officer, and thereout to allow to the Perſon intitled thereto, the ſaid Reward of Ten Shillings, and ſuch other Recompence for his Trouble, Loſs of Time, and Expences, as the ſaid Juſtice or Juſtices ſhall think fit; and the Overplus (if any) ſhall be returned to ſuch Officer upon Demand.

Penalty for not paying the reward.

6, AND be it further enacted by the Authority aforeſaid, That the Juſtices of the Peace for every County, Riding, City, Borough, Town-corporate, Diviſion, or Liberty, or any Two of them, ſhall, Four Times in the Year at leaſt, or oftner (if need be) meet in their reſpective Diviſions, and by their Warrant, command the Conſtables or other Peace-officers of every Hundred, Pariſh, Town, and Hamlet, in their reſpective Diviſions, who ſhall be aſſiſted with ſufficient Men of the ſame Places, to make a general Privy Search in one Night, throughout their ſeveral and reſpective Limits, for the finding and apprehending of Rogues and Vagabonds; and every Juſtice of the Peace ſhall alſo, on receiving Information that Rogues and Vagabonds are in any Place within his Juriſdiction, iſſue his Warrant to the Conſtable or other Officer of ſuch Place, to ſearch for and apprehend ſuch Rogues and Vagabonds; and ſuch Rogues and Vagabonds as they ſhall find and apprehend upon ſuch Searches, they ſhall cauſe to be brought before any Juſtice or Juſtices of the Peace of the ſame

General privy ſearches to be made.

unty, Riding, City, Borough, Town-corporate, Divi- GEO. II, 17TH, C. 5, VAGRANT'S ACT.
n, or Liberty.
7, AND be it further enacted by the Authority afore-
d, That where any Rogues or Vagabonds, apprehended
any Conſtable, or ſuch other Officer or Perſon as afore- Juſtices to
d, or upon ſuch Search as aforeſaid, ſhall be brought be- puniſh va-
e any Juſtice or Juſtices of the Peace, it ſhall and may gabonds, &c. taken
lawful for ſuch Juſtice or Juſtices, and he or they are up at privy
reby required to inform himſelf or themſelves, by the ſearches.
amination upon Oath of the Perſon or Perſons appre-
nded, or of any other Perſon, of the Condition and Cir-
mſtances of the Perſon or Perſons ſo apprehended, and
the Pariſh or Place, where he, ſhe, or they were laſt le-
ly ſettled; the Subſtance of which Examination or Ex-
inations ſhall be put into Writing, and be ſubſcribed or
ed by the Perſon or Perſons ſo examined; and the ſaid
tice or Juſtices ſhall likewiſe ſign the ſame, and tranſ-
t it to the next General or Quarter Seſſions of the Peace
be holden for the ſame County, Riding, City, Borough,
wn-corporate, Diviſion, or Liberty, there to be filed
l kept on Record; and ſuch Juſtice or Juſtices of the
ace, ſhall and are hereby required to order all ſuch Per-
s ſo apprehended, to be publickly whipt by the Con- Whipt,
ble, Petty Conſtable, or Tythingman, or ſome other Per-
to be appointed by ſuch Conſtable, Petty Conſtable, or
thingman, of ſuch Pariſh or Place where ſuch Perſons
re apprehended, or to order ſuch Perſons to be ſent to
Houſe of Correction, there to remain until the next
neral or Quarter Seſſions, or for any leſs Time, as ſuch
ſtice or Juſtices ſhall think proper; and after ſuch Whip- Different
g or Confinement, ſuch Juſtice or Juſtices may, and are ſorts of va-
reby empowered, if they think convenient, by a Paſs gabonds, how to be
der Hand and Seal, in the Manner and Form hereafter paſſed.
rected, to cauſe ſuch Perſons to be conveyed to the Place
their laſt legal Settlement; but if it cannot be found,
en to the Place of their Birth; or if ſuch Perſons, or
y of them, be under the Age of Fourteen Years, and
ve any Father or Mother living, then to the Place of
Abode of ſuch Father or Mother, there to be delivered
ſome Churchwarden, Chapelwarden, or Overſeer of the

GEO. II, 17TH, C. 5, VAGRANT ACT.

Poor of ſuch Pariſh, Town, or Place; which Paſs ſhall be in the Form or to the Effect following.

To the Conſtable of in the County of or to the Tythingman, or other Officer (as the Caſe ſhall be, or if the Offender is committed to the Houſe of Correction, then to the Governor or Maſter thereof) *And alſo to all Conſtables and other Officers whom it may concern, to receive and convey; and to the Churchwardens, Chapelwardens, or Overſeers of the Poor of the Pariſh, Town, or Place* (as the Caſe ſhall be) *of in the County of or either of them, to receive and obey.*

Form of the paſs.

" WHEREAS was *(or were)* apprehended in the Pariſh of *(or in the Town of or other Place, deſcribing it)* as a Rogue and Vagabond, or as Rogues and Vagabonds, *videlicet*, wandering and begging there *(or as the Caſe ſhall be)* and upon Examination of the ſaid taken before upon Oath (which Examination is hereunto annexed) it doth appear, that his, her, or their laſt legal Settlement is at in this County (or in the County of) or, that the ſaid was *(or were)* born in the Pariſh of in this County (or in the County of) and hath *(or have)* not ſince obtained any legal Settlement; or that the ſaid is *(or are)* under the Age of Fourteen Years, and hath *(or have)* a Father or Mother living or abiding in the Pariſh *(or Town)* of *(or other Place, deſcribing it)* Theſe are therefore to require you the ſaid Conſtable, or other Officer, *(or Governor or Maſter of the Houſe of Correction, as the Caſe ſhall be)* to convey the ſaid in the next direct Way to the ſaid Pariſh *(or Town)* of *(or other Place)* within the ſaid County, and there to deliver him *(her or them)* to ſome Churchwarden, Chapelwarden, or Overſeer of the Poor of the ſame Pariſh *(Town or Place)* to be there provided for according to Law *(or in caſe the ſaid Pariſh, Town, or Place, to which ſuch Perſon or Perſons is or are to be ſent, lies in ſome other*

County, Riding, Diviſion, Corporation, or Franchiſe having Separate, General, or Quarter Seſſions of the Peace, then the Form ſhall be as followeth, videlicet, To convey the ſaid to the Pariſh *(or Town)* of that being the firſt Pariſh *(or Town)* in the next Precinct through which he *(ſhe or they)* ought to paſs in the direct Way to the ſaid Pariſh *(or Town)* of to which he *(ſhe or they)* is *(or are)* to be ſent, and to deliver him *(her or them)* to the Conſtable, or other Officer of ſuch firſt Town *(or Pariſh)* in ſuch next Precinct, together with this Paſs, and the Duplicate of the Examination of the ſaid taking his Receipt for the ſame; and the ſaid is *(or are)* to be thence conveyed on in like Manner to the ſaid Pariſh (*or Town*) of there to be delivered to ſome Churchwarden, Capelwarden, or Overſeer of the Poor of the ſame Pariſh (*Town or Place*) to be there provided for according to Law); and you the ſaid Churchwardens, Chapelwardens, and Overſeers of the Poor, are hereby required to receive the ſaid Perſon (*or Perſons*) and provide for him (*her or them*) as aforeſaid." GEO. II, 17TH, C. 5, VAGRANT ACT.

8, AND be it further enacted by the Authority afore- Duplicate of the paſs and examination to be filed at the next general or quarter ſeſſions.
d, That ſuch Juſtice or Juſtices ſhall make or cauſe to made a Duplicate of ſuch Paſs and Examination, and n the ſame; and ſhall afterwards tranſmit the Duplicate the ſaid Paſs annexed to the Examination, to the next neral or Quarter Seſſions of the Peace, there to be filed d kept on Record; and ſhall annex the Duplicate of the amination to the Paſs, and ſend it with the ſame; and ſaid Paſs, Examination, and Duplicates thereof, ſhall d may be read in any Court of Record in *England*, *ales*, or the Town of *Berwick* upon *Tweed*, as Evidence.

9, AND be it further enacted by the Authority afore- Power of juſtices over vagabonds and incorrigible rogues.
d, That where any Offender againſt this Act ſhall be mmitted, as aforeſaid, to the Houſe of Correction, there remain until the next General or Quarter Seſſions; and e Juſtices at ſuch Seſſions ſhall, on Examination of the rcumſtances of the Caſe, adjudge ſuch Perſon a Rogue Vagabond, or an incorrigible Rogue; they may, if they

think convenient, order ſuch Rogue or Vagabond to be detained and kept in the ſaid Houſe of Correction to hard Labour, for any further Time not exceeding Six Months, and ſuch incorrigible Rogue, for any further Time, not exceeding Two Years, nor leſs than Six Months from the Time of making ſuch Order of Seſſions; and during the Time of ſuch Perſon's Confinement, to be corrected by Whipping, in ſuch Manner, aud at ſuch Times and Places within their Juriſdictions, as according to the Nature of ſuch Perſon's Offence, they in their Diſcretion ſhall think fit; and ſuch Perſon may (if the Juſtices at the ſaid Seſſions ſhall think convenient) afterwards be ſent away by ſuch Paſs, *mutatis mutandis*, as aforeſaid; and if ſuch Perſon, being a Male, is above the Age of Twelve Years, the Juſtices at their Seſſions may and are hereby empowered, at any Time before he is Diſcharged from the Houſe of Correction, to ſend him to be employed in His Majeſty's Service, either by Sea or Land, if they ſhall judge proper; and in caſe any ſuch incorrigible Rogue, ſo ordered by the ſaid General or Quarter Seſſions to be detained and kept in the ſaid Houſe of Correction, ſhall, before the Expiration of the Time for which he or ſhe ſhall be ſo ordered to be there detained and kept, break out or make his or her Eſcape from the ſaid Houſe of Correction, or ſhall offend again in like Manner; in every ſuch Caſe, every ſuch Perſon ſhall be deemed and taken to be guilty of Felony, and being legally convicted thereof, ſhall and may be tranſported for any Time not exceeding Seven Years, in the ſame Manner as by the Laws now in being other Felons may be tranſported.

Juſtices to regulate the paſſes, by giving the officers certificates.

10, AND to prevent unneceſſary Expence in the paſſing or conveying of Rogues, Vagabonds, and incorrigible Rogues, be it enacted by the Authority aforeſaid, That the Juſtice or Juſtices of the Peace, who ſhall make the Paſs, ſhall at the ſame Time, with the ſaid Paſs, cauſe likewiſe to be delivered to the Conſtable, or other Officer appointed to convey them, a Note or Certificate, aſcertaining how they are to be conveyed, by Horſe, Cart, or on Foot, and what Allowance ſuch Conſtable or other Officer is to have for conveying them (according to the Rates or Allowances appointed by the General or Quarter Seſſions of the Peace,

n after directed) in the Form, or to the Effect *videlicet:* GEO. II, 17TH, C. 5, VAGRANT ACT.

REAS by a Paſs (*reciting the Subſtance or Effect aid Paſs*) I (*or we*) do hereby order and direct Perſon (*or Perſons*) to be conveyed on Foot (*or rt. or by Horſe, et cetera*) to the ſaid Town (*or* of in *r Place, deſcribing it*) in the Way to ſuch Pariſh *or Place, as the Caſe ſhall be*) in ime; for which the ſaid Conſtable (*et cetera*) is lowed the Sum of and no Form of the certificates.

nder my Hand (or our s) *this Day*, et cetera.

D be it further enacted by the Authority afore- the Conſtable, or other Officer, who ſhall re- Paſs and Certificate, ſhall, and is hereby requir- ey, or cauſe to be conveyed, the Perſon or Per- d in ſuch Paſs, in ſuch Manner, and in ſuch by the ſame Paſs ſhall be directed, the next direct ie Place where he, ſhe, or they are ordered to be ch Place be in the ſame County, Riding, Divi- oration, or Franchiſe, where the ſaid Perſon or ere apprehended; but if the Place to which the Perſons ſo apprehended is or are to be ſent, lies her County, Riding, Diviſion, Corporation, or he ſhall deliver the ſaid Perſon or Perſons to the or other ſuch Officer of the firſt Town, Pariſh, in the next County, Riding, Diviſion, Corpora- ranchiſe, in the direct Way to the Place to which n or Perſons is or are to be conveyed, together aid Paſs and Duplicate of Examination, taking t for the ſame; and ſuch Conſtable, or other all, without Delay, apply to ſome Juſtice of the he ſame County, Riding, Diviſion, Corporation, iſe, who ſhall make the like Certificate as before *mutandis*) and deliver it to the ſaid Conſtable, or er, who ſhall and is hereby required with all The duty of officers with ſuch paſs and certificate.

GEO. II, 17TH, C. 5, VAGRANT ACT.

Speed to convey the Perſon or Perſons unto the firſt Pariſh, Town, or Place, in the next County, Riding, Diviſion, Corporation, or Franchiſe, in the direct Way to the Place to which ſuch Perſon or Perſons is or are to be conveyed; and ſo in like Manner from one County, Riding, Diviſion, Corporation, or Franchiſe, to another, till they come to the Place to which ſuch Perſon or Perſons is or are ſent; and the Conſtable, or other Officer, who ſhall deliver ſuch Perſon or Perſons to the Churchwarden, or other Perſon ordered to receive them by ſuch Paſs, ſhall at the ſame Time deliver the ſaid Paſs, with the Duplicate of Examination, taking their Receipt for the ſame; and if the Churchwarden, or other Perſon, who ſhall receive any Perſon ſo ſent, ſhall think the Examination to be falſe, he is hereby empowered to carry the Perſon ſo ſent, before ſome Juſtice of the Peace, who, if he ſee Cauſe, may commit ſuch Perſon to the Houſe of Correction till the next Quarter Seſſions, and the Juſtices there, if they ſee Cauſe, may deal with ſuch Perſon as an incorrigible Rogue; but the Perſon ſo ſent, ſhall not be removed from the Place to which ſent, but by Order of Two Juſtices, in the ſame Manner as other poor Perſons are removed to the Place of their Settlement.

Perſons ſhall pay for their own paſſage, if they are found able.

12, AND whereas it often happens that Perſons commit Acts of Vagrancy, when they are in Circumſtances ſufficient to pay for their Journey home; be it therefore enacted by the Authority aforeſaid, That it ſhall and may be lawful for any Juſtice of the Peace, before whom any Vagrants ſhall be carried, to order ſuch Vagrants to be ſearched, and their Bundles to be inſpected by the Conſtable, Tythingman, Churchwarden, or Overſeer of the Poor, in the Preſence of the ſaid Juſtice; and if it ſhall appear that any Vagrant ſhall be found to have ſufficient wherewithal to pay for their Paſſage, either in the whole or in part, to the Pariſh to which they belong, then the ſaid Juſtice or Juſtices ſhall order ſo much of the Money to be paid, or other Effects found with or upon ſuch Vagrants, to be ſold, and employed for and towards the Expence of taking up and paſſing ſuch Vagrants as aforeſaid, returning the Overplus (if any be) after deducting the Charges of ſuch Sale to ſuch Vagrants.

13, AND be it further enacted by the Authority afore-

id, That the Conſtable or other Officer of any Pariſh or lace, within the Counties of *Cumberland*, *Northumber-nd*, *Durham*, or Town of *Berwick* upon *Tweed*, ſhall, and ey are hereby authorized and required, upon any Perſon r Perſons being delivered to them by a Paſs and Examina-on, who ſhall have been apprehended within the ſaid ounties or Town, or brought to them according to the irection of this Act, whoſe Place of legal Settlement is that Part of *Great Britain* called *Scotland*, to deliver the id Examination to the Clerk of the Peace for ſuch re-ective County, to be kept among the Records of the Sef-ons of that County, and to convey, or cauſe to be convey-l, ſuch Perſon or Perſons, with the ſaid Paſs, into the ext adjoining Shire, Stewartry, or Place in that Part of ie United Kingdom; and to deliver him, her, or them to me Conſtable or other Officer of the next Pariſh, Diſ-ict, or Place, within the ſaid Shire, Stewartry, or Place, king his Receipt for him, her, or them; and ſuch Officer hereby required to receive ſuch Perſon or Perſons, and ive ſuch Receipt, and to diſpoſe of him, her, or them ac-rding to Law; and in caſe any ſuch Vagrant, after being ſent and conveyed into that Part of *Great Britain* called *cotland*, ſhall, after being ſo ſent as aforeſaid, be found andering, begging, or miſbehaving him or herſelf within at Part of *Great Britain* called *England*, contrary to the ue Intent and Meaning of this Act; every ſuch Perſon offending ſhall be deemed an incorrigible Rogue, and be uniſhed as incorrigible Rogues are to be puniſhed by this ct.

GEO. II, 17TH, C. 5, VAGRANT ACT.

Regulations for paſſing vagrants into Scotland,

14, AND whereas divers Vagrants have been conveyed om County to County, in order to be ſent to Places in *eland*, the Iſles of *Mann*, *Jerſey*, *Guernſey*, or *Scilly* (their ſt legal Settlement) but for want of Authority to compel aſters of Ships and Veſſels to take them on-board, in rder to be carried thither at reaſonable Rates, they may e very chargeable to the Maritime Counties, Towns, and laces in *England* and *Wales*, where they may lie for ſuch xportation; be it therefore enacted by the Authority foreſaid, That all and every Maſter and Maſters of any hip, Veſſel, or Pacquet Boat, bound for *Ireland*, the Iſles

into Ireland, &c.

GEO. II, 17TH, C. 5, VAGRANT ACT.

of *Mann*, *Jerſey*, *Guernſey*, or *Scilly*, ſhall, and they, and each of them is and are hereby required, upon Warrant to him or them directed under the Hand and Seal of a Juſtice of the Peace of the County, Town, or Place where ſuch Ship, Veſſel, or Pacquet Boat ſhall lie, to take on-board the ſame ſuch Vagrant and Vagrants as ſhall be named and expreſſed in the ſaid Warrant, and convey him, her, or them to ſuch Place in *Ireland*, the Iſles of *Mann*, *Jerſey*, *Guernſey*, or *Scilly*, as ſuch Ship, Veſſel, or Pacquet Boat ſhall be bound to, or ſhall arrive at; and for the Charges thereof ſuch Maſter ſhall take, and the Conſtable or Perſon who ſerves him with the ſaid Warrant ſhall pay him, ſuch Rate *per* Head as the Juſtices of the Peace at their Quarter Seſſions ſhall from time to time appoint, for every ſuch Vagrant ſo brought and delivered to him; and ſuch Maſter ſhall, and is hereby required, on the Back of the ſaid Warrant, to ſign a Receipt for the Money ſo paid, and alſo for the Vagrant or Vagrants ſo brought and delivered; which Warrant ſo indorſed ſhall then be produced to the Juſtice of the Peace who ſigned and ſealed the ſame, and upon his Allowance thereof, under his Hand, the Money ſo paid ſhall be repaid by the County, in ſuch Manner as by this Act the Money to be paid for conveying Vagrants from County to County is directed; and every Maſter of ſuch Ship, Veſſel, or Pacquet Boat, neglecting or refuſing to receive on-board, or to tranſport ſuch Vagrant or Vagrants, or to indorſe and ſign ſuch Receipt as aforeſaid, ſhall forfeit Five Pounds to the Uſe of the Poor of the Pariſh or Place where the Offence ſhall be committed; to be levied by Diſtreſs and Sale of the ſaid Ship, or any Goods within the ſame, by Warrant under the Hand and Seal of any Juſtice of the Peace for the ſame County, City, or Town-corporate, returning the Overplus (if any be) upon Demand, after the ſaid Penalty and Charges of levying the ſame are ſatisfied.

Penalty on maſters of ſhips refuſing to take vagrants on board.

Maſters not obliged to take on-board more than one vagrant for every 20 tons burthen.

15, PROVIDED always, and it is hereby declared, That no Maſter of any ſuch Pacquet Boat, Ship, or Veſſel, ſhall be compelled to take on-board more than one Vagrant for every Twenty Tons Burthen of any ſuch Boat, Ship, or Veſſel.

16, AND be it further enacted by the Authority aforeſaid, That the Juſtices of the Peace of any County, Ride

g, City, Borough, Town-corporate, Diviſion, or Liber- GEO. II, , ſhall and may at the General or Quarter Seſſions of 17TH, C. 5, e Peace from time to time, limit, appoint, and direct VAGRANT ACT. hat Rates and Allowances *per* Mile, or otherwiſe, ſhall : made for the paſſing, conveying, or maintaining, of ogues, Vagabonds, or incorrigible Rogues, to be paſſed · conveyed as aforeſaid; and may likewiſe make ſuch her Orders, Rules, and Directions, for the more regular :oceeding or acting therein, within their reſpective Limits id Juriſdictions, as they, in their Diſcretion, ſhall think oper; which Rates, Allowances, Orders, Rules, and Di- ctions ſhall from time to time be obſerved and ſubmitted by all Juſtices of the Peace, Conſtables, Officers, and her Perſons within the ſame Limits and Juriſdictions re- ectively.

Juſtices to limit the rates per mile for paſſing vagrants, &c.

17, AND be it further enacted, That in caſe any Petty The high onſtable, or other ſuch Officer, of any Pariſh or Place, conſtable to all bring to any High or Chief Conſtable any ſuch Cer- pay the icate as aforeſaid, as ſhall be given him by any Juſtice rates to petty conſtables, &c. Juſtices of the Peace for the proper County or Place, for paſſing :ertaining how and for what Rates or Allowances he vagrants. ill be required to convey any Rogues, Vagabonds, or in- rrigible Rogues as aforeſaid, together with a Receipt or ote from any Conſtable or other Officer or Perſon to om the Perſon or Perſons ſo to be conveyed was or were livered, the ſaid High or Chief Conſtable ſhall and may y unto ſuch Petty Conſtable or other Officer, the Rates Allowances aſcertained in and by ſuch Certificate, and more, taking from ſuch Petty Conſtable or other ficer ſuch Certificate, and his Receipt for the ſame; and : ſaid High or Chief Conſtable ſhall be allowed the ſame the Treaſurer of the County, Riding, Liberty, Divi- , Corporation, or Franchiſe, on his paſſing his Ac- nts, upon his producing and delivering up ſuch Cer- :ate and Receipt, and giving his own Receipt for ſame to ſuch Treaſurer; and the Juſtices at the Penalty on neral or Quarter Seſſions ſhall allow the ſame to ſuch the high conſtables :aſurer in his Accounts, upon his producing and deli- refuſing to ing up the Vouchers aforeſaid: And in caſe any High pay, as di- Chief Conſtable ſhall refuſe or neglect to pay the ſaid rected by the juſtices ty Conſtable, or other Officer or Perſon, the Rates or warrants. owances aſcertained in and by ſuch Certificate and Re-

GEO. II, 17TH, C. 5, VAGRANT ACT.

ceipt on Demand; it ſhall and may be lawful for any Juſtice or Juſtices of the Peace, by Warrant under Hand and Seal to levy double the Sum aſcertained by ſuch Certificate, by Diſtreſs and Sale of the Goods of ſuch High or Chief Conſtable, and thereout to allow the ſaid Petty Conſtable, or other Officer or Perſon, the Sum aſcertained in and by ſuch Certificate and Receipt, and ſuch other Recompence for his Trouble, Loſs of Time, and Expences, as the ſaid Juſtice or Juſtices ſhall think fit; and the Overplus (if any) ſhall be returned to ſuch High or Chief Conſtable upon Demand; and in Cities, Towns-corporate, and other Places, where there is no High or Chief Conſtable, ſuch Petty Conſtables or other Officers ſhall be allowed what they ſhall ſo pay purſuant to the Directions of ſuch Certificate, in their reſpective Accounts, upon their producing and delivering up ſuch Vouchers; or in caſe any Governor or Maſter of a Houſe of Correction ſhall deliver ſuch Certificate and Receipt to any Treaſurer as aforeſaid, ſuch Treaſurer ſhall pay the Rates therein aſcertained to ſuch Governor or Maſter of a Houſe of Correction, taking his Receipt for the ſame, which ſhall be allowed to ſuch Treaſurer in his Accounts, on his producing and delivering up ſuch Vouchers.

Penalty on counterfeiting or altering certificates, receipts, or notes.

Penalty on the officer not paſſing according to order; and on the officers not receiving the paſs.

Manner of levying the penalty.

18, PROVIDED always, and be it further enacted by the Authority aforeſaid, That in caſe any ſuch Petty Conſtable, or other Officer, or Governor, or Maſter of any Houſe of Correction, ſhall counterfeit any ſuch Certificate, Receipt, or Note, or make, or knowingly permit to be made, any Alteration in any ſuch Certificate, Receipt, or Note, he ſhall forfeit the Sum of Fifty Pounds; and in caſe he ſhall not convey, or cauſe to be conveyed, the Perſons to the Place where they ought to be conveyed, or ſhall not deliver them to the proper Perſon; or if any Conſtable, or other Officer or Perſon, ſhall refuſe to receive any ſuch Perſons ſent to them, or to give a Receipt or Note as before directed; that in any of the ſaid Caſes, the Conſtable or other Officer or Perſon, ſhall forfeit the Sum of Twenty Pounds; which ſaid reſpective Forfeitures ſhall be levied by Diſtreſs and Sale of the Offender's Goods, by Warrant or Order of the Juſtices of the Peace, where ſuch Offence ſhall be committed, at their General or Quarter

ſeſſions; one Moiety to be paid to the Perſon or Perſons who ſhall firſt make Information againſt any ſuch Offender, and the other Moiety to be paid to the Treaſurer of the County or Place, to be applied by him as Part of the publick Stock; and the Overplus (if any) after ſuch Forfeitures levied, and the Charges of Diſtreſs ſatisfied, ſhall be returned to ſuch Conſtable or other Officer or Perſon upon Demand. GEO. II, 17TH, C. 5, VAGRANT ACT.

19, AND be it enacted by the Authority aforeſaid, That the Pariſh or Place to which any Rogue, Vagabond, or incorrigible Rogue, ſhall be conveyed by Paſs as aforeſaid, ſhall take Care to employ in Work, or place in ſome Work-houſe or Alms-houſe, the Perſon or Perſons ſo conveyed to them, until he, ſhe, or they ſhall betake themſelves to ſome Service, or other Employment: And in caſe any ſuch Perſon or Perſons ſhall refuſe to work, or ſhall not betake themſelves to ſome Service or Employment, the Overſeers of the Poor of the ſame Pariſh or Place, or the major Part of them, may cauſe ſuch Perſon or Perſons to be carried before ſome Juſtice of the Peace, in order to be ſent to the Houſe of Correction, there to be kept to hard Labour. Vagabonds, &c. to be ſet to work.

20, AND whereas there are ſometimes Perſons, who by Lunacy, or otherwiſe are furiouſly mad, or are ſo far diſordered in their Senſes that they may be dangerous to be permitted to go abroad; be it therefore enacted by the Authority aforeſaid, That it ſhall and may be lawful for any Two or more Juſtices of the Peace, where ſuch Lunatick or mad Perſon ſhall be found, by Warrant under their Hands and Seals, directed to the Conſtables, Churchwardens, and Overſeers of the Poor of the Pariſh, Town, or Place, or ſome of them, to cauſe ſuch Perſon ſo to be apprehended, and kept ſafely locked up in ſome ſecure Place, within the County or Precinct where ſuch Pariſh, Town, or Place ſhall lie, as ſuch Juſtices ſhall under their Hands and Seals direct and appoint; and (if ſuch Juſtices find it neceſſary) to be there chained, if the laſt legal Settlement of ſuch Perſon ſhall be in any Pariſh, Town, or Place, within ſuch County or Precinct; and if ſuch Settlement ſhall not be there, then ſuch Perſon ſhall be ſent to the Place of his or her laſt legal Settlement by a Paſs, *mutatis* Lunaticks, how to be diſpoſed of.

GEO. II, 17TH, C. 5, VAGRANT ACT.

mutandis, as aforeſaid, and ſhall be locked up or chained, by Warrant of Two Juſtices of the County or Precinct to which ſuch Perſon is ſo ſent, in Manner as aforeſaid; and the reaſonable Charges of removing, and of keeping, maintaining, and curing ſuch Perſon during ſuch Reſtraint (which ſhall be for and during ſuch Time only as ſuch Lunacy or Madneſs ſhall continue) ſhall be ſatisfied and paid (ſuch Charges being firſt proved upon Oath) by Order of Two or more Juſtices of the Peace, directing the Churchwardens or Overſeers where any Goods, Chattels, Lands, or Tenements of ſuch Perſon ſhall be, to ſeize and ſell ſo much of the Goods and Chattels, or receive ſo much of the Annual Rents of the Lands and Tenements, as is neceſſary to pay the ſame; and to account for what is ſo ſeized, ſold, or received, to the next Quarter Seſſions; but if ſuch Perſon hath not an Eſtate to pay and ſatisfy the ſame, over and above what ſhall be ſufficient to maintain his or her Family, then ſuch Charges ſhall be ſatisfied and paid by the Pariſh, Town, or Place to which ſuch Perſon belongs, by Order of Two Juſtices, directed to the Churchwardens or Overſeers for that Purpoſe.

Goods and eſtates of lunaticks to be ſeized, to pay the charge of their maintenance.

But not to wrong their families.

Proviſo.

21, PROVIDED always, That this Act, or any Thing therein contained, ſhall not extend, or be conſtrued to extend, to reſtrain or abridge the Prerogative of the King, or the Power or Authority of the Lord Chancellor, Lord Keeper, or Commiſſioners of the Great Seal of *Great Britain* for the time being, or the Chancellor, or Vice Chancellor of the County Palatine of *Lancaſter* for the time being, or of the Chamberlain or Vice Chamberlain of the County Palatine of *Cheſter* for the time being, touching or concerning ſuch Lunaticks, or to reſtrain or prevent any Friend or Relation of ſuch Lunaticks from taking them under their own Care and Protection; any Thing in this Act contained to the contrary notwithſtanding.

Penalty on offic rs not doing their duty.

22, AND be it further enacted by the Authority aforeſaid, That in caſe any Conſtable or other Officer, or Governor, or Maſter of any Houſe of Correction, ſhall be defective, remiſs, or negligent in his Duty, in the Execution of this Act, in any Caſe, for which no Puniſhment is hereinbefore particularly provided; or in caſe any Perſon or Perſons ſhall diſturb or hinder the Execution of this Act,

ſhall reſcue any Perſon apprehended, or paſſing from
ce to Place by virtue thereof, or ſhall be adviſing, aid-
, or aſſiſting to his or her Eſcape, and ſhall be thereof
victed upon the Oath of one or more credible Witneſs
Witneſſes, before one or more Juſtice or Juſtices of the
ce, where ſuch Offence ſhall be committed (which Oath
ſaid Juſtice or Juſtices are hereby empowered to admi-
er) the Perſon or Perſons ſo offending, for every ſuch
nce ſhall forfeit any Sum not exceeding Five Pounds,
leſs than Ten Shillings, to the Uſe of the Poor of the
iſh or Place where ſuch Offence ſhall be committed; to
levied by Diſtreſs and Sale of the Offender's Goods,
Warrant from ſuch Juſtice or Juſtices, returning the
erplus (if any be) upon Demand, after the ſaid For-
ure and Charges of making and keeping the ſaid Diſ-
s ſhall be paid and ſatisfied; and if ſufficient Diſtreſs
not be found, it ſhall and may be lawful to and for one
more ſuch Juſtice or Juſtices to commit the Perſons ſo of-
ding to the Houſe of Correction, there to be kept to
d Labour for any Time not exceeding Two Months.

and on perſons hindering the execution of this act; or reſcuing a priſoner.

To be levied by diſtreſs and ſale, &c.

13, AND whereas Perſons herein before deſcribed to be
gues, Vagabonds, or incorrigible Rogues, are much en-
raged in wandering about, by the Reception they too
en meet with in Villages and Places, where they are
mitted to lodge in Houſes, Barns, or other Out-houſes
Buildings, by Means whereof, and their falling Sick
re, great Expences are ſometimes brought upon Pariſhes;
r Remedy thereof, be it enacted by the Authority
reſaid, That if any Perſon ſhall knowingly permit or
fer any ſuch Rogue, Vagabond, or incorrigible Rogue,
Lodge or take Shelter in his or her Houſe, Barn, or
er Out-houſe or Buildings, and ſhall not apprehend and
ry ſuch Rogue, Vagabond, or incorrigible Rogue before
ne Juſtice of the Peace, or give Notice to ſome Conſtable
ſuch other Officer ſo to do, ſuch Perſon being thereof law-
ly convicted, either on Confeſſion, or upon Oath of one
more credible Witneſs or Witneſſes, before one or more
His Majeſty's Juſtices of the Peace where ſuch Offence
ll be committed, ſhall forfeit any Sum not exceeding
ty Shillings, nor leſs than Ten Shillings; one Moiety
reof to the Informer, and the other Moiety to the Uſe

Penalty for ſheltering offenders.

GEO. II, 17TH, C. 5, VAGRANT ACT.

of the Poor of the Pariſh or Place where ſuch Offence ſhall be committed; to be levied by Diſtreſs and Sale of the Goods and Chattels of ſuch Offender, by Warrant from ſuch Juſtice or Juſtices, returning the Overplus (if any) upon Demand, after ſuch Forfeiture and Charges of ſuch Diſtreſs ſhall be ſatisfied; and if any Charge ſhall be brought upon any Pariſh or Place by Means of any ſuch Offence, the ſame ſhall be anſwered to the ſaid Pariſh or Place by ſuch Offender, and be levied by Diſtreſs and Sale of his or their Goods and Chattels as aforeſaid: And if ſufficient Diſtreſs cannot be found, ſuch Offender ſhall be committed to the Houſe of Correction by the Juſtice or Juſtices, for any Time not exceeding one Month.

24, AND whereas Perſons are often found offending againſt this Act, having Children with them, whom they bring up in a diſſolute Courſe of Life, deſtructive to ſuch Children, and prejudicial to the Kingdom, in which a Race of diſorderly Perſons will increaſe, if ſuch Children are ſuffered to remain with ſuch Offenders; be it therefore enacted by the Authority aforeſaid, That if any ſuch Child, above the Age of Seven Years, ſhall be committed to the Houſe of Correction as aforeſaid, it ſhall and may be lawful for the Juſtices at the Quarter Seſſions, if they ſee convenient, at any Time before ſuch Child be diſcharged, to order ſuch Child to be placed out in ſuch Manner as they ſhall think fit, as a Servant or Apprentice to any Perſon within their reſpective Juriſdictions, who is willing to take ſuch Child, to ſerve ſuch Perſon till ſuch Child ſhall arrive at the Age of Twenty-one Years, or for any leſs Time, as to the ſaid Juſtices ſhall ſeem meet: And if any Offender, who was found with ſuch Child as aforeſaid, ſhall be again found with the ſame Child (which was ſo placed out as aforeſaid) offending againſt this Act, ſuch Offender ſhall be deemed an incorrigible Rogue.

Beggars with children how to be ordered.

25, AND whereas Women wandering and begging, are often delivered of Children in Pariſhes and Places to which they do not belong, whereby they become chargeable to the ſame; be it therefore enacted by the Authority aforeſaid, That where any ſuch Woman ſhall be ſo delivered, and become chargeable, it ſhall and may be lawful for the Churchwardens or Overſeers of the Poor of ſuch Pariſh or

How to order women delivered of children in the ſtreet.

lace, to detain ſuch Woman in their Cuſtody until they an ſafely convey her to ſome Juſtice of the Peace, who all examine her, and commit her to the Houſe of Correc- on, until the next General or Quarter Seſſions, who may if they ſee convenient) order her to be publickly whipt, nd detained in the Houſe of Correction, for any further ime not exceeding Six Months; and upon Application y the Churchwardens or Overſeers of the Place where ſhe as ſo delivered, the Juſtices at ſuch Seſſions ſhall order ie Treaſurer of the County or Diſtrict to pay them ſuch Sum of Money as ſhall be adjudged a reaſonable Satis- ction for the Charges ſuch Place has been put to on ſuch Woman's Account; and if ſuch Woman ſhall be detained nd conveyed to a Juſtice as aforeſaid, the Child of which ie is delivered, if a Baſtard, ſhall not be ſettled in the lace where ſo born, nor be ſent thither, for Want of other ettlement, by a Paſs, by virtue of this Act, but the Set- lement of ſuch Woman ſhall be deemed the Settlement of uch Child; any Law to the contrary notwithſtanding. 13 GEO. II. 17TH. C. 5. VAGRANT ACT.

26, AND be it further enacted by the Authority afore- aid, That any Perſons aggrieved by any Act of any Juſ- ice or Juſtices of the Peace out of Seſſions, in or concern- ig the Execution of this Act, may appeal to the next eneral or Quarter Seſſions of the County, Riding, Liber- , or Diviſion, giving reaſonable Notice thereof, whoſe rder thereupon ſhall be final. Perſons aggrieved may appeal to the next general or quarter ſeſſions.

27, PROVIDED always, and be it further enacted, That all Cities and Towns, where, by virtue of ſpecial Acts Parliament, the Charge of paſſing Vagrants is to be de- ayed in other Manner than is by this Act directed, or here ſuch Vagrants, by virtue of ſpecial Statutes, are to apprehended and conveyed to the Places whither they e to be ſent by any Perſon or Perſons, or Officers, other an thoſe named for that Purpoſe in this Act, ſuch Charge all be borne and defrayed in ſuch Cities and Towns in ke Manner as before the making of this Act; and the erſon or Officer liable to ſuch Service in the ſaid Cities nd Towns, by virtue of the ſaid ſpecial Acts of Parlia- ent, ſhall continue liable as if this Act had never been ade; and if any Perſon ſhall be delivered to a Bedel or onſtable within the City or Liberties of the City of *Lon-* This act not to alter cuſtoms of paſſing vagrants, as ſettled by former acts.

don, to be conveyed on, as directed by this Act, the ſaid Bedel or Conſtable ſhall not deliver ſuch Perſon in any other Precinct within the ſaid City or Liberties, but in the next County, as directed by this Act.

How to order vagabonds whoſe ſettlements cannot be found.

28, AND be it further enacted by the Authority aforeſaid, That where any Perſons offending againſt this Act, have been committed, as aforeſaid, to the Houſe of Correction, there to remain until the next General or Quarter Seſſions, if, upon the Examination of the Perſons ſo committed, as aforeſaid, no Place can be found to which they may be ſent by a Paſs, as aforeſaid, the ſaid Juſtices ſhall at the ſaid Seſſions order ſuch Perſons to be detained and employed in the Houſe of Correction, until they can provide for themſelves, or until the Juſtices of the Peace, at their General or Quarter Seſſions, can place them out in ſome lawful Calling, as Servants, Apprentices, Soldiers, Mariners, or otherwiſe, either within this Realm, or His Majeſty's Colonies or Plantations in *America*, which the ſaid Seſſions are empowered to do in ſuch Manner as they ſhall think fit.

This act not to affect the heirs or aſſigns of John Dutton of Cheſhire, Eſq.

29, PROVIDED always, That this Act, or any Thing therein contained, or any Authority thereby given, ſhall not in anywiſe extend to diſinherit, prejudice, or hinder the Heirs or Aſſigns of *John Duſton* of *Dutton*, late of the County of *Cheſter*, Eſquire, deceaſed, their Heirs or Aſſigns, for, touching, or concerning the Liberty, Privilege, Pre-eminence, or Authority, Juriſdiction, or Inheritance, which they, their Heirs, or Aſſigns, now lawfully uſe, or have, or lawfully may, or ought to uſe, within the County Palatine of *Cheſter*, and County of *Cheſter*, or either of them, by reaſon of any ancient Charters of any Kings of this Land, or by reaſon of any Preſcription, or Lawful Uſage, or Title whatſoever.

Clauſe concerning erecting or enlarging houſes of correction.

30, AND for the better Execution of this Act, be it further enacted by the Authority aforeſaid, That upon the Preſentment of the Grand Jury or Grand Juries at the Aſſizes, Great Seſſions, General or Gaol Delivery, held for any County or Liberty, that there is no Houſe of Correction; and that it will be neceſſary to provide one or more Houſe or Houſes of Correction in any ſuch County or in any Riding, Liberty, or Diviſion, in any ſuch County; or

it the Houſe or Houſes of Correction already provided rein reſpectively, is or are not ſufficient, and that it will neceſſary to provide one or more Houſe or Houſes of rrection there, or that ſuch Houſe or Houſes of Cor- tion is or are not ſufficient or convenient, or want to be arged; the Juſtices of the Peace of any County, Rid- , Liberty, or Diviſion, being at the General or Quarter ſions aſſembled, ſhall have full Power and Authority to ild, erect, or enlarge, one or more fit or convenient Houſe Houſes of Correction, or to buy or hire one or more or convenient Houſe or Houſes for that Purpoſe, with a ıvenient Backſide or Outlet, or convenient Backſides or ıtlets thereto adjoining, or to purchaſe Land, and erect h Houſe or Houſes of Correction upon Part thereof, l to lay out the reſt of ſuch Land for ſuch Backſide or ckſides, Outlet or Outlets, within any ſuch County, ding, Liberty, or Diviſion, according to the true Intent d Effect of ſuch Preſentment; and the ſaid Juſtices, be- g ſo aſſembled at the General or Quarter Seſſions, may d ſhall conclude and agree upon raiſing ſuch Sums of oney, as, upon Examination of able and ſufficient Work- n, or any other Perſons, ſhall appear to be neceſſary for ilding, erecting, or enlarging ſuch Houſe or Houſes of rrection, or for purchaſing or hiring a Houſe, Houſes, Land (if thought neceſſary) for that Purpoſe: And if ſhall be thought neceſſary for that Purpoſe, to buy or rchaſe any Houſe, Houſes, or Land; the Houſe, Houſes, Land ſo purchaſed, ſhall be conveyed to ſuch Perſon or rſons as the ſaid Juſtices ſo aſſembled at their General or uarter Seſſions ſhall think fit, in Truſt and for the Uſe l Purpoſes aforeſaid.

GEO. II, 17TH, C. 5, VAGRANT ACT.

31, AND be it further enacted by the Authority afore- d, That the Juſtices of the Peace for any County, Rid- , City, Borough, Town-corporate, Diviſion, or Liberty, their General or Quarter Seſſions, ſhall and are hereby quired from time to time, to take effectual Care that the ouſes of Correction already provided or hereafter to be ovided within the limits of their reſpective Juriſdictions, cept ſuch Houſes of Correction as have been or ſhall be ected or maintained by any particular Founder or Found- s, ſhall be duly fitted up, furniſhed, and ſupplied with

Houſes of correction to be under the care and management of the juſtices; except thoſe maintained by private founders.

GEO. II, 17TH, C. 5, VAGRANT ACT.

ſufficient Implements, Materials, and Furniture, for keeping, relieving, ſetting to work, employing, and correcting all idle and diſorderly Perſons, Rogues, Vagabonds, incorrigible Rogues, and others, who ſhall be ſent to, confined, or continued in the ſame; and two of the Juſtices of the Peace within the reſpective Hundreds, Diviſions, or Juriſdictions, where there ſhall be any Houſe or Houſes of Correction, or any Two Juſtices who ſhall be appointed at the General or Quarter Seſſions for that Purpoſe, ſhall and are hereby required to viſit the ſame twice, or oftner if need be, in every Year, and to examine into the Eſtate and Management thereof, and to report the ſame to the next General or Quarter Seſſions; to the Intent, that if any Thing be amiſs therein, the ſame may, by Order of ſuch General or Quarter Seſſions, be reformed and amended; and the ſaid Juſtices at their reſpective General or Quarter Seſſions, ſhall have the like Power and Authority over the Houſes of Correction to be erected or purchaſed by virtue of this Act, as they have by virtue of any Law now in Force, over thoſe already erected and provided; and further, that if the ſaid Governors or Maſters of the ſaid Houſes of Correction, ſhall not ſet or keep the ſaid idle and diſorderly Perſons, Rogues, Vagabonds, or incorrigible Rogues to hard Labour, and puniſh and correct them according to the Directions of the Warrants or Orders by which they ſhall be committed to or detained in their Cuſtody, or ſhall otherwiſe miſbehave themſelves, or be defective, remiſs, or negligent in their Duty; the ſaid Juſtices, at their ſaid General or Quarter Seſſions, are hereby required to ſet and impoſe ſuch Fines and Penalties upon them, as they ſhall think fit and convenient, in the ſame Manner as Fines and Penalties may be ſet and impoſed on Governors or Maſters of Houſes of Correction, for the Neglect therein mentioned, by an Act of Parliament paſſed in the Seventh Year of the Reign of King *James* the Firſt, intitled, *An Act for the due Execution of divers Laws and Statutes heretofore made againſt Rogues, Vagabonds, and Sturdy Beggars, and other leud and idle Perſons;* which Fines and Penalties ſhall be paid to the Treaſurer of the County, Riding, Liberty, or Diviſion, and ſhall be accounted for by him as Part of the publick or County Stock;

Maſters of houſes of correction to be fined for miſbehaviour;

ıe ſaid Juſtices at their reſpective General or Quarter ns, may from time to time appoint and remove the rnor or Governors, Maſter or Maſters, or other Offi- of ſuch Houſes of Correction, and make ſuch Orders legulations as they ſhall think fit, for the better go- ng and regulating of the ſaid Houſes of Correction, or employing, relieving, and puniſhing, the Perſons in, or for ſending them to or from thence, according true Intent and Meaning of this Act; which ſaid or Orders of ſuch Juſtices ſhall be final to all In- and Purpoſes, and no *Certiorari* ſhall be granted for emoval of the ſame; and in caſe the Perſon or Per- removed by Order of any General or Quarter Seſ- ſhall refuſe or neglect to quit the Poſſeſſion of ſuch e of Correction, from whence he or they are ordered removed, for the Space of Ten Days next, after No- iven him or them in Writing by the Clerk of the ; it ſhall and may be lawful to and for any Two or Juſtices of the Peace of the ſame County, Riding, ion, or Place (upon producing to them ſuch Order of ns, or an atteſted Copy thereof, and upon Oath made e them by one or more credible Witneſs or Witneſſes, :h Notice having been given to the Perſon or Perſons noved, and of his or their having refuſed or neglect- quit Poſſeſſion) by Warrant under their Hands and , to direct the Sheriff of the ſame County, Riding, ion, or Place, to remove him or them out of ſuch e of Correction, and he is hereby authorized and re- d to clear the Poſſeſſion thereof, in like Manner as a Writ of *Habere facias poſſeſſionem*.

GEO. II, 17TH, C. 5, VAGRANT ACT.

or turned out at the diſcretion of the juſtices.

, AND whereas Doubts have ariſen, and may ariſe, e Authority is given to any Juſtice or Juſtices of the :, to commit Offenders to the Houſe of Correction for ices cognizable before them, out of the General or ter Seſſions of the Peace, how long Offenders may be detained, and in what Manner treated, where the e and Manner of their Puniſhment is not by Law ex- ly directed, limited, or appointed; be it therefore en- by the Authority aforeſaid, That where any Offend- hall be committed as aforeſaid, by virtue of any Law

Power of juſtices in committing offenders.

GEO. II, 17TH, C. 5, VAGRANT ACT.

now in being, or hereafter to be made, and the Time and Manner of their Puniſhment is not expreſsly limited, directed, and appointed, the ſaid Juſtice or Juſtices ſhall commit ſuch Offender to the Houſe of Correction, there to be kept to hard Labour until the next General or Quarter Seſſions, or until diſcharged by due Courſe of Law; and it ſhall and may be lawful for Two Juſtices (of which the Juſtice who committed ſuch Offender to be one) to diſcharge the ſaid Offender before the ſaid Seſſions, if they ſee Cauſe; and if he ſhall not be ſo diſcharged, the ſaid Seſſions may either diſcharge him, or continue him in Cuſtody for ſuch Time as they ſhall ſee fit, not exceeding Three Months.

33, AND to defray the Expences of apprehending, paſſing, conveying, and maintaining Rogues, Vagabonds, and incorrigible Rogues, and likewiſe the Expences of erecting, purchaſing, hiring, enlarging, altering, and repairing, Houſes of Correction, and of purchaſing Land to erect them upon, and for Backſides and Outlets, and of fitting up and furniſhing ſuch Houſes of Correction, and of ſending Perſons to and from the ſame, and employing them there, according to the Directions of this Act, and for defraying all other Expences neceſſary for the Execution of this Act, not herein before provided for; be it further enacted by the Authority aforeſaid, That the Juſtices of the Peace at the General or Quarter Seſſions, may and ſhall cauſe ſuch Sums of Money as ſhall be neceſſary for all or any of the Purpoſes aforeſaid, to be raiſed in the ſame Manner as Rates are directed to be raiſed by an Act made in the Twelfth Year of the Reign of His preſent Majeſty, intled, *An Act for the more eaſy aſſeſſing, collecting, and levying of County Rates.*

Juſtices to raiſe money to defray all expences, by rates on the inhabits, as directed by an act made 12 Geo. II.

34, AND be it further enacted by the Authority aforeſaid, That if any Perſon or Perſons ſhall be ſued for any Matter or Thing which he or they ſhall do in execution of this Act, he or they may plead the General Iſſue, and give the ſpecial Matter in evidence; and if a Verdict ſhall paſs for the Defendant, or the Plaintiff ſhall be nonſuited, or diſcontinue his Suit, the Defendant may recover Treble Coſts; and that this Act ſhall be deemed to commence from the Firſt Day of *June* One thouſand ſeven hundred

General iſſue.

Treble coſts

and forty-four; and from that Time an Act made in the Thirteenth Year of the Reign of His preſent Majeſty, intitled, *An Act for amending and enforcing the Laws relating to Rogues, Vagabonds, and other idle and diſorderly Perſons, and for reducing the ſame into one Act of Parliament, and alſo for amending the Laws for erecting, providing, and regulating, Houſes of Correction*, ſhall be and is hereby repealed; but all the Acts therein mentioned to be repealed, are hereby declared to be repealed, and continue repealed.

GEO. II, 17TH, C. 5, VAGRANT ACT.

A&I 13 Geo. II repealed.

No. LVI.

GEO. II, Parl. 26, c. 6. *An Act to oblige Ships more effectually to perform their Quarantine; and for the better preventing the Plague being brought from Foreign Parts into* Great Britain *or* Ireland, *or the Iſles of* Guernſey, Jerſey, Alderney, Sark, *or* Mann.

Preamble.

I, WHEREAS it is neceſſary that ſome Proviſion be made by Parliament, for obliging Ships and Perſons coming from Places infected with, or frequently ſubject to the Plague, to perform Quarantine in ſuch Manner as hath been, or ſhall be ordered by His Majeſty, His Heirs, or Succeſſors; and for puniſhing Offenders therein, in a more expeditious Manner than can be done by the ordinary Methods of Law; be it enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in Parliament aſſembled, and by the Authority of the ſame, That all Ships and Veſſels arriving, and all Perſons, Goods, and Merchandizes whatſoever, coming, or imported into any Port or Place within *Great Britain* or *Ireland*, or the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, from any Place from whence His Majeſty, His Heirs, or Succeſſors, by and with the Advice of His or Their Privy Council, ſhall judge it

All veſſels, perſons, and goods, coming from places from whence the plague may be brought, ſubject to quarantine.

GEO. II, 26, c. 6, POLICE, —PLAGUE.

probable that the Infection may be brought, ſhall be obliged to make their Quarantine in ſuch Place and Places, for ſuch Time, and in ſuch Manner, as hath been, or ſhall, from time to time, be directed by His Majeſty, His Heirs, or Succeſſors, by His or Their Order or Orders made in His or Their Privy Council, and notified by Proclamation, or publiſhed in the *London Gazette*; and that until ſuch Ships, Veſſels, Perſons, Goods, and Merchandizes, ſhall have reſpectively performed, and be diſcharged from ſuch Quarantine, no ſuch Perſon, Goods, or Merchandizes, or any of them, ſhall come, or be brought on Shore, or go or be put on Board any other Ship or Veſſel, in any Place within His Majeſty's Dominions, unleſs in ſuch Manner, and in ſuch Caſes, and by ſuch Licence, as ſhall be directed or permitted by ſuch Order or Orders made by His Majeſty, His Heirs, or Succeſſors, in Council as aforeſaid; and that all ſuch Ships and Veſſels, and the Perſons or Goods coming or imported in, or going or being put on Board the ſame, and all Ships, Veſſels, Boats, and Perſons, receiving any Goods or Perſons, out of the ſame, ſhall be ſubject to ſuch Orders, Rules, and Directions, concerning Quarantine, and the Prevention of Infection, as have been, or ſhall be, made by His Majeſty, His Heirs, and Succeſſors, in Council, and notified by Proclamation, or publiſhed in the *London Gazette* as aforeſaid.

Veſſels infected, being to the northward of Cape Finiſterre, to proceed to the harbour of New Grimſby, and give notice of their caſe; and the intelligence to be tranſmitted to the ſecretary's office, &c.

2, AND it is hereby further enacted by the Authority aforeſaid, That if the Plague ſhall appear on Board any Ship, being to the Northward of Cape *Finiſterre*, the Maſter, Commander, or other Perſon having Charge thereof, ſhall immediately proceed to the Harbour of *New Grimſby* in the Iſlands of *Scilly*, where being arrived, he ſhall make known his Caſe to ſome Officer of the Cuſtoms there, who ſhall immediately acquaint ſome Cuſtom-houſe Officer of ſome near Port of *England* thereof; and the ſaid Cuſtom-houſe Officer ſhall, with all poſſible Speed, ſend up the Intelligence thereof to One of His Majeſty's Principal Secretaries of State, that ſuch Meaſures may be taken for the Comfort and Support of the Crew of ſuch Ship ſo infected, and ſuch Precautions uſed to prevent the Spreading of the Infection, as the Caſe ſhall require; and the ſaid Ships ſhall remain at the ſaid Iſlands of *Scilly*, till His Ma-

ſty's Pleaſure be known; nor ſhall any of her Crew go 1 Shore; but in caſe the ſaid Maſter, Commander, or her Perſon having Charge of the ſaid Ship ſo infected, all not be able to make the ſaid Iſlands of *Scilly*, or ſhall e forced by Streſs of Weather, or otherwiſe, to go up ei- ier of the Channels, he ſhall not preſume to enter with ich Ship into any Port, but ſhall remain in ſome open oad, till he receives Orders from His Majeſty, or His rivy Council, and ſhall take care to prevent any of His hip's Company from going out of His Ship, and to avoid l Intercourſe with other Ships or Perſons; and the ſaid laſter, or any other Perſon on Board ſuch Ship as afore- id, who ſhall be diſobedient herein, ſhall be adjudged uilty of Felony, and ſhall ſuffer Death as in Caſes of Fe- ny, without Benefit of Clergy; and every ſuch Offence made Felony, ſhall and may be inquired of, heard, and termined, in the County where the Offence ſhall be com- itted, or elſe in the County where the Offender ſhall be prehended.

GEO. II, 26, c. 6, POLICE, —PLAGUE.

Veſſels not able to make Scilly, to remain in ſome open road till further orders arrive.

Penalty of diſobedience, death.

3, AND to the end that it may be better known whether ny Ship or Veſſel be actually infected with the Plague, or hether ſuch Ship or Veſſel, or the Mariners or Cargo oming and imported in the ſame, are liable to any Orders ouching Quarantine; be it further enacted by the Autho- ity aforeſaid, That when any Country or Place is or ſhall e infected with the Plague; or when any Order or Orders , are, or ſhall be made by His Majeſty, His Heirs, or ucceſſors, concerning Quarantine, and the Prevention of nfection, as aforeſaid, as often as any Ship or Veſſel ſhall ttempt to enter into any Port or Place in *Great Britain* r *Ireland*, or of the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *ark*, or *Mann*, the Principal Officer of His Majeſty's Cuſ- oms in ſuch Port or Place, or ſuch Perſon as ſhall be au- horized to ſee Quarantine duly performed, ſhall go off, or auſe ſome other Perſon to be by him appointed for that urpoſe to go off to ſuch Ship or Veſſel; and ſuch Officer, r other Perſon authorized to ſee Quarantine performed, as foreſaid, or the Perſon ſo by him appointed for that Pur- oſe, ſhall, at a convenient Diſtance from ſuch Ship or Veſſel, demand of the Commander, Maſter, or other Per-

When any place ſhall be infected, or orders made concerning quarantine, officer to go off to the veſſel coming into port, and interrogate the maſter concerning the ſhip's cargo and voyage, health, &c.

GEO. II, 26, c. 6, POLICE, —PLAGUE.

ſon having Charge of ſuch Ship or Veſſel; and ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, ſhall, upon ſuch Demand, give a true Account of the following Particulars; that is to ſay, the Name of ſuch Ship or Veſſel; the Name of the Commander, or Perſon having Charge thereof; at what Place or Places the Cargo was taken on Board; what Place or Places the Ship or Veſſel touched at in her Voyage; whether ſuch Places, or any, and which of them were infected with the Plague; how long ſuch Ship or Veſſel had been in her Paſſage; how many Perſons were on Board when the ſaid Ship or Veſſel ſet ſail; whether any, and what Perſons, during that Voyage on Board ſuch Ship or Veſſel, had been, or ſhall be then infected with the Plague; how many died in the Voyage, and of what Diſtemper; what Ships or Veſſels he, or any of his Ship's Company, with his Privity, went on Board, or had any of their Company come on Board his Ship or Veſſel in the Voyage; and to what Place ſuch Ships or Veſſels belonged; and alſo the true Contents of his Lading, to the beſt of his Knowledge: And in caſe it ſhall appear upon ſuch Examination, or otherwiſe, that any Perſon then on Board ſuch Ship or Veſſel ſhall at the Time of ſuch Examination be actually infected with the Plague, or that ſuch Ship is obliged to perform Quarantine, in ſuch Caſe it ſhall and may be lawful to and for the Officers of any of his Majeſty's Ships of War, or any of His Majeſty's Forts or Garriſons, and all other His Majeſty's Officers whom it may concern, upon Notice thereof given to them, or any of them reſpectively, and to and for any other Perſon or Perſons whom they ſhall call to their Aid and Aſſiſtance, and they are hereby required to oblige ſuch Ship or Veſſel to go and repair to ſuch Place as hath been, or ſhall be appointed for Performance of Quarantine, and to uſe all neceſſary Means for that Purpoſe, be it by firing of Guns upon ſuch Ship or Veſſel, or any other Kind of Force or Violence whatſoever; and in caſe any ſuch Ship or Veſſel ſhall come from any Place viſited with the Plague, or have any Perſon on Board actually infected, and the Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, ſhall conceal the ſame, ſuch Commander, Maſter, or other Per-

If the infection ſhall be on board, &c. the veſſel to be obliged to perform quarantine.

If the veſſel ſhall come from any place infected, or have the infection on

on having Charge of ſuch Ship or Veſſel, ſhall be adjudg- GEO. II, d guilty of Felony, and ſhall ſuffer Death as in Caſes of 26, c. 6, elony, without Benefit of Clergy; and in caſe ſuch Com- POLICE, —PLAGUE. ander, Maſter, or other Perſon having Charge of ſuch hip or Veſſel, ſhall, upon ſuch Demand made, as afore- aid, not make a true Diſcovery in any other of the Par- iculars aforeſaid, ſuch Commander, Maſter, or other Per- on having charge of ſuch Ship or Veſſel, for every ſuch Offence, ſhall forfeit the Sum of Two hundred Pounds, One Moiety thereof to the King, His Heirs, and Succeſſors, nd the other Moiety to him or them who ſhall ſue for the ame, by Action or Debt, Bill, Plaint, or Information, in ny of His Majeſty's Courts of Record at *Weſtminſter*, *Edinburgh*, *Dublin*, or in the proper Courts of the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, reſpectively.

board, the maſter concealing the ſame, to be adjudged of felony; and not making a true diſcovery in other particulars, to forfeit 200l.

4, AND be it further enacted by the Authority aforeſaid, That every Maſter, Commander, or other Perſon having Charge of any Ship or Veſſel, which ſhall be ordered to perform Quarantine as aforeſaid, ſhall, after his Arrival at he Place appointed for the Performance of his Quaran- ine, deliver, on Demand, to the Chief Officer appointed o ſee Quarantine duly performed there, ſuch Bill of Health, and Manifeſt, as he ſhall have received from any *Britiſh* Conſul during his Voyage, together with his Log- ook and Journal, under Penalty of forfeiting Five hun- red Pounds; One Moiety thereof to the King, His Heirs, nd Succeſſors; the other Moiety to him or them who hall ſue for the ſame, by Action of Debt, Bill, Plaint, or nformation, in any of His Majeſty's Courts of Record at *Weſtminſter*, *Edinburgh*, *Dublin*, or in the proper Courts of he Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, re- pectively.

Maſter of a veſſel performing quarantine, to deliver to the officer appointed, the bill of health, and manifeſt, of the Britiſh conſul; with the log-book and journal, under penalty of 500l.

5, AND be it further enacted by the Authority afore- aid, That if any Commander, Maſter, or other Perſon having Charge of any Ship or Veſſel liable to perform Quarantine, having Notice thereof, ſhall himſelf quit, or hall knowingly permit or ſuffer any Seaman or Paſſenger, coming in ſuch Ship or Veſſel, to quit ſuch Ship or Veſſel, by going on Shore, or by going on Board any other Ship, Boat, or Veſſel, before ſuch Quarantine ſhall be fully per- formed, unleſs in ſuch Caſes, and by ſuch proper Licence,

Maſter, &c. quitting the veſſel before quarantine be performed, unleſs by licence;

GEO. II, 26, c. 6, POLICE, —PLAGUE.

as ſhall be directed or permitted by ſuch Order or Orders made, or to be made, concerning Quarantine, and the Prevention of Infection, as aforeſaid; or in caſe any Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, ſhall not, within convenient Time after due Notice given for that Purpoſe by the proper Officer, cauſe ſuch Ship or Veſſel, and the Lading thereof, to be conveyed into the Place or Places appointed for ſuch Ship, Veſſel, and Lading, to perform Quarantine reſpectively; then, and in every ſuch Caſe, every ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, for every ſuch Offence ſhall forfeit Five hundred Pounds; One Moiety thereof to the King, His Heirs, and Succeſſors; and the other Moiety to him or them who will ſue for the ſame; and alſo, if any Perſon ſhall ſo quit ſuch Ship or Veſſel, by going on Shore, or by going on Board any other Ship or Veſſel, contrary to the true Meaning of this Act, it ſhall and may be lawful for all Perſons whatſoever, by any Kind of Force and Violence, to compel ſuch Perſon to return on Board ſuch Ship or Veſſel; and every ſuch Perſon ſo quitting ſuch Ship or Veſſel, ſhall, for every ſuch Offence, ſuffer Impriſonment for the Space of Six Months, and ſhall alſo forfeit the Sum of Two hundred Pounds; One Moiety to the King, His Heirs, and Succeſſors; the other Moiety to him or them that will ſue for the ſame; the ſame reſpective Penalties and Forfeitures to be recovered by Action of Debt, Bill, Plaint, or Information, in any of His Majeſty's Courts of Record at *Weſtminſter*, *Edinburgh*, *Dublin*, or in the proper Courts of the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, reſpectively.

or not going to the place appointed for quarantine, to forfeit 500l.

and the party quitting the veſſel to be obliged by force to return on board,

and to ſuffer impriſonment and forfeit 200l.

6, AND be it further enacted by the Authority aforeſaid, That whenever His Majeſty, His Heirs, and Succeſſors, by and with the Advice and Conſent of Parliament, ſhall direct Houſes or Lazarets to be provided for the receiving and entertaining of Perſons obliging to perform Quarantine, or for the depoſiting, opening, and airing of Goods and Merchandizes liable to perform Quarantine as aforeſaid, it ſhall and may be lawful to erect the ſame, either in any waſte Grounds or Commons, or where ſuch waſte Grounds or Commons are not ſufficient, in the ſeveral Grounds of any Perſon or Perſons whatſoever, not be-

Lazarets may be erected on common or private grounds, making ſatisfaction to the proprietors.

ing a Houſe, Park, Garden, Orchard, Yard, or Planted Walk, or Avenue to a Houſe, paying ſuch Rate, Rent, or Conſideration for the ſame to the Perſons intereſted therein reſpectively, according to their ſeveral Intereſts in the ſame, as ſhall be agreed on between the Perſons ſo intereſted, their Guardians or Truſtees, and any Two Perſons to be appointed for that Purpoſe by His Majeſty, His Heirs, or Succeſſors, under His or Their Sign Manual; and in caſe of any Difference concerning ſuch Rate, Rent, or Conſideration, between the Perſons ſo intereſted, their Guardians or Truſtees, and ſuch Perſons ſo to be appointed by His Majeſty, His Heirs, or Succeſſors, as aforeſaid; then, and in ſuch Caſes, the ſaid Perſons ſo to be appointed by His Majeſty, His Heirs, and Succeſſors, may, and are hereby authorized, Thirty clear Days before any General Quarter Seſſion of the Peace to be holden for the reſpective Counties or Diviſions where ſuch Grounds ſhall reſpectively lie as aforeſaid, to give, or cauſe to be given, to the Occupier or Occupiers of ſuch ſeveral Grounds, or to be left at their laſt Places of Abode reſpectively, a Notice in Writing, deſcribing the Quantity of Ground ſo directed by His Majeſty, His Heirs, and Succeſſors, by and with the Advice and Conſent of Parliament, for the Purpoſes aforeſaid, and purporting that the Rent or Conſideration of ſuch Ground will be adjuſted and ſettled by a Jury at the ſaid Seſſions; and the Juſtices at their ſaid Seſſions, upon Proof to them made that ſuch Notices have been given, ſhall and are hereby authorized and required to charge the Jury which ſhall attend at the ſaid Seſſions, or ſome other Jury of Twelve honeſt and ſubſtantial Men (to be then and there impanelled and returned by the Sheriff of the County, without Fee or Reward) and cauſe to be Sworn, well and truly on their Oath, to aſſeſs the Value of the Ground comprized in the ſaid Notices, and the Rent or Conſideration to be given for the ſame to the reſpective Owner or Owners thereof, according to their reſpective Intereſts therein; which Oath the ſaid Juſtices are hereby required to adminiſter to the ſaid Jury, and to which ſaid Jury the ſaid Perſons to be appointed by His Majeſty, His Heirs, and Succeſſors, and the Parties intereſted in ſuch Ground, ſhall have their lawful Challenges; and the ſaid Jury being ſo

GEO. II, 26, c. 6, POLICE, —PLAGUE.

In caſe of difference concerning ſuch ſatisfaction, the ſame to be ſettled by a jury at the quarter-ſeſſions.

ſworn and charged as aforeſaid, after proper Evidence on Oath given to them, ſhall, by their Verdict, aſſeſs the Rent or Conſideration to be given for ſuch Ground to the reſpective Owner or Owners thereof, according to their reſpective Intereſts therein; which Verdict of the ſaid Jury, and Judgment of the ſaid Juſtices thereupon, ſhall be concluſive and finally bind all Parties; and that from and after ſuch Verdict and Judgment, His Majeſty, His Heirs, and Succeſſors, ſhall and may hold and enjoy ſuch Ground for and during all ſuch Time and Term as His Majeſty, His Heirs, and Succeſſors, ſhall judge neceſſary for the Purpoſes aforeſaid, paying for the ſame ſuch Rate, Rent, or other Conſideration, as ſhall be agreed upon, or aſſeſſed and adjudged, as aforeſaid.

Officers to oblige all perſons to comply with ſuch orders as ſhall be made.

7, AND be it further enacted by the Authority aforeſaid, That the proper Officers authorized to put in Execution ſuch Orders made, or to be made, as aforeſaid, ſhall, and they are hereby empowered and required to cauſe and compel all Perſons obliged to perform Quarantine, as aforeſaid, and all Goods and Merchandizes comprized within any ſuch Orders made, or to be made, as aforeſaid, reſpectively to repair, or to be conveyed to ſome of the ſaid Houſes or Lazarets, or to ſuch other Places as ſhall be provided for the Reception of ſuch Perſons, Goods, or Merchandizes, or for the opening and airing of ſuch Goods or Merchandizes, according to ſuch Order or Orders made, or to be made, as aforeſaid.

Perſons refuſing to perform quarantine, &c.

8, AND be it further enacted, That if any Perſon obliged to perform Quarantine, as aforeſaid, ſhall wilfully refuſe or neglect to repair, within convenient Time, after due Notice for that Purpoſe given to him, her, or them, by the proper Officer, to the Houſe, Lazaret, or other Place, duly appointed for him, her, or them, or, having been placed in ſuch Houſe or Lazaret, or other Place, ſhall eſcape, or attempt to eſcape, out of the ſame, before Quarantine fully performed; it ſhall and may be lawful to and for the Watchmen, and other Perſons appointed to ſee Quarantine performed, by ſuch Force as the Caſe ſhall require, to compel every ſuch Perſon ſo refuſing or neglecting, as aforeſaid, and every ſuch Perſon ſo eſcaping, or attempting to eſcape, as aforeſaid, to repair or return into ſuch Houſe, Lazaret, or other Place ſo appointed for him

Officers may compel them by force.

ɔr her, as aforeſaid; and every ſuch Perſon ſo refuſing or neglecting to repair, within convenient Time after ſuch Notice, as aforeſaid, into ſuch Houſe, Lazaret, or other Place appointed for him or her, as aforeſaid; and alſo every Perſon actually eſcaping, as aforeſaid, ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as a Felon, without Benefit of Clergy. GEO. II. 26, c. 6, POLICE, —PLAGUE. Perſons eſcaping, &c. to be adjudged of felony.

9, AND whereas Diſobedience, or refractory Behaviour in Perſons under Quarantine, may be attended with great Danger and Inconvenience; be it further enacted by the Authority aforeſaid, That all Perſons liable to perform Quarantine, whether in Ships, Lazarets, or elſewhere, ſhall be ſubject, during the ſaid Quarantine, to ſuch Orders as they ſhall receive from the proper Officers authorized to ſee it duly performed; and the ſaid Officers are hereby empowered and required to enforce all neceſſary Obedience to their ſaid Orders; and may, in caſe of Neceſſity, call in others to their Aſſiſtance; and all Perſons, ſo called, are hereby required to aſſiſt accordingly. Officers to inforce obedience to their orders.

10, AND be it further enacted, That if any Perſon, not infected with the Plague, nor liable to peform Quarantine, ſhall enter any Houſe, Lazaret, or other Place ſo appointed, as aforeſaid, whilſt any Perſon or Perſons infected with the Plague, or being under Quarantine, ſhall be therein; and ſhall return, or attempt to return from thence, unleſs in ſuch Caſes, and by ſuch Licence, as ſhall be directed or permitted by ſuch Order or Orders, made, or to be made, as aforeſaid; it ſhall and may be lawful to and for the Watchmen, or other Perſons appointed to guard or ſecure ſuch Houſe, Lazaret, or other Place ſo appointed as aforeſaid, by ſuch Force as the Caſe ſhall require, to compel ſuch Perſon ſo returning, or attempting to return, to repair into ſuch Houſe, Lazaret, or other Place ſo appointed as aforeſaid, there to continue and perform Quarantine: And in caſe ſuch Perſon ſhall actually eſcape out of ſuch Houſe, Lazaret, or other Place, where he or ſhe ſhall be ſo placed for Performance of Quarantine, before he or ſhe ſhall have fully performed the ſame, he or ſhe ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as a Felon, without Benefit of Clergy. Sound perſons entering a lazaret, &c. where the infection is, to be obliged to continue there, and perform quarantine; and if he eſcape, to be judged of felony.

11, AND it is hereby further enacted, That if any Offi-

GEO. II, 26, c. 6, POLICE, —PLAGUE,

Officer neglecting his duty, to forfeit his office and 100l.

cer or Officers of His Majeſty's Cuſtoms, or any other Officer or Officers, Perſon or Perſons whatſoever, to whom it doth or ſhall appertain, to execute any Order or Orders made or to be made concerning Quarantine, or the Prevention of Infection, and notified as aforeſaid, or to ſee the ſame put in Execution, ſhall be guilty of any wilful Breach or Neglect of his or their Duty in that Behalf, every ſuch Officer and Perſon ſo offending ſhall forfeit his Office or Employment in the Cuſtoms, or any other Office or Employment, and ſhall become from thenceforth incapable to hold or enjoy the ſame, or to take a new Grant thereof, and forfeit the Sum of One hundred Pounds; One Moiety thereof to the King, His Heirs, and Succeſſors, and the other Moiety to him or them who ſhall or will ſue for the ſame, by Action of Debt, Bill, Plaint, or Information, in any of His Majeſty's Courts of Record at *Weſtminſter*, *Edinburgh*, *Dublin*, or in the proper Courts of the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, reſpectively; and if any ſuch Officer or Perſon ſhall embezzle, or ſhall knowingly and willingly damage any Goods performing Quarantine under his Direction, he ſhall be liable to pay Treble Damages, and Full Coſts of Suit.

and if he embezzle any goods, to pay treble damages, and full coſts.

12, AND whereas certain Species of Goods and Merchandizes are more eſpecially liable to retain Infection, and may be brought from Places infected into other Countries, and from thence imported into His Majeſty's Dominions in Ships not obliged to perform Quarantine; be it enacted by the Authority aforeſaid, That all ſuch Goods and Merchandizes as are or ſhall be particularly ſpecified for that Purpoſe, in any Order or Orders made or to be made concerning Quarantine, and the Prevention of Infection, as aforeſaid; which ſhall be imported into any of His Majeſty's Dominions, from any foreign Country or Place, in any Ship or Veſſel whatſoever, ſhall be ſubject and liable to ſuch Order or Orders, made or to be made, concerning Quarantine, and the Prevention of Infection as aforeſaid.

Such goods as ſhall be ſpecified, to be liable to the orders for quarantine.

13, AND it is hereby further enacted, That after Quarantine ſhall have been duly performed by any Ship or Veſſel, Perſon or Perſons, obliged to perform Quarantine, according to ſuch Order or Orders, made as aforeſaid, and this Act, and upon Proof to be made by the Oaths of the

On proof on oath that the veſſel hath performed quarantine,

Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, and of Two of the Perſons belonging to ſuch Ship or Veſſel, or upon Proof to be made by the Oaths of Two or more credible Witneſſes, before the Cuſtomer, Comptroller, or Collector of the Port where ſuch Quarantine ſhall be performed, or the next Port thereunto, or before any of their Deputies, or any Juſtice of the Peace living near to ſuch Port, or where ſuch Quarantine ſhall have been performed, within any of the ſaid Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, before any Two Jurats or Magiſtrates of any of the ſaid Iſles reſpectively (which Perſons are hereby authorized and required to adminiſter ſuch Oath) that ſuch Ship or Veſſel, and all and every ſuch Perſon and Perſons reſpectively, have duly performed Quarantine as aforeſaid; and that the Ship or Veſſel, and all and every ſuch Perſon and Perſons, are free from Infection; and after producing a Certificate to that Purpoſe, ſigned by the Chief Officer who ſuperintended the Quarantine of the ſaid Ship, then, and in the ſaid reſpective Caſes, ſuch Cuſtomer, Comptroller, or Collector, or any of their Deputies, together with the ſaid Juſtice of the Peace, or ſuch Jurats or Magiſtrates as aforeſaid reſpectively, are hereby required to give a Certificate thereof; and thereupon ſuch Ship or Veſſel, and all and every ſuch Perſon and Perſons, ſo having performed Quarantine, ſhall be liable to no further Reſtraint or Detention upon the ſame Account, for which ſuch Ship or Veſſel, Perſon or Perſons, ſhall have performed Quarantine as aforeſaid.

GEO. II. 26, c. 6. POLICE, —PLAGUE.

that the ſame is free from infection; and a certificate from the officer ſuperintending the quarantine, &c.

the ſhip and men to be diſcharged.

14, AND it is hereby further enacted, That the Officer before whom ſuch Oath ſhall be made, and by whom ſuch Certificate ſhall be given, ſhall, for ſuch reſpective Oath and Certificate, demand or take no Fee or Reward whatſoever.

No fee to be taken for the oath or certificate.

15, PROVIDED nevertheleſs, and it is hereby enacted, that all Goods, Wares, and Merchandizes, liable to Quarantine, as aforeſaid, ſhall be opened and aired in ſuch Place or Places, and for ſuch Time, and in ſuch Manner, as ſhall be directed by His Majeſty, His Heirs, or Succeſſors, by ſuch Order or Orders to be made as aforeſaid; and after ſuch Orders ſhall have been duly complied with, and Certificate thereof given by the Chief Officer appointed

Orders to be complied with for the airing of goods; and on certificate and proof on oath, that the ſame have been complied with,

GEO. II, 26, c. 6, POLICE, —PLAGUE.

to ſuperintend the Quarantine and Airing of ſuch Goods, Wares, and Merchandizes, and Proof ſhall be made thereof, by the Oaths of Two or more credible Witneſſes, before the Cuſtomer, Comptroller, or Collector of the Port, lying next to ſuch Place or Places where ſuch Goods, Wares, or Merchandizes, ſhall have been opened and aired as aforeſaid, or any of their Deputies, or any Juſtice of the Peace living near the ſame, or before any Two Jurats or Magiſtrates of the ſaid Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, reſpectively (who are hereby authorized and required to adminiſter ſuch Oath) upon Certificate and Return of ſuch Proof by ſuch Cuſtomer, Comptroller, or Collector, or any of their Deputies, or ſuch Two Jurats or Magiſtrates, as aforeſaid (who are hereby reſpectively required to make ſuch Certificate and Return to the Commiſſioners appointed for the Management of the Cuſtoms of *Great Britain* or *Ireland*, or to the Governor or Commander in Chief, being upon the Place, in the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, reſpectively) ſuch Goods, Wares, and Merchandizes, ſhall be forthwith diſcharged from any Reſtraint or Detention upon the ſame Account, by Order of the ſaid Commiſſioners, or any Two of them, or of the ſaid Governor or Commander in Chief of any of the ſaid Iſles as aforeſaid, reſpectively; for every of which Oath, Certificate, and Order, no Fee or Reward whatſoever ſhall be demanded or taken.

the goods to be diſcharged.

Officer demanding a fee for ſuch oath or certificate, to forfeit 100l.

16, PROVIDED always, and be it enacted, That if any Officer or other Perſon ſhall demand or take any Fee or Reward whatſoever for any ſuch Oath, Order, or Certificate, to be adminiſtered or made in purſuance of this Act, every Perſon ſo offending ſhall forfeit the Sum of One hundred Pounds, One Moiety thereof to His Majeſty, His Heirs, and Succeſſors, and the other Moiety to him or them who ſhall ſue for the ſame, by Action of Debt, Bill, Plaint, or Information, in any of His Majeſty's Courts of Record at *Weſtminſter*, *Edinburgh*, *Dublin*, or in the proper Courts of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, reſpectively, in which Caſe Treble Coſts ſhall be allowed to either Party as in other Caſes.

Superintendant of the quaran-

17, AND be it further enacted by the Authority aforeſaid, That if any Officer, or other Perſon appointed to ſee

ine duly performed, or any Perſon placed or ap- GEO. II, 26, c. 6, POLICE, —PLAGUE.
as a Watchman upon any Houſe, Lazaret, Ship, or
ace, for Performance of Quarantine, in purſuance
Act, ſhall deſert from their Duty, when employed tine, or
id Buſineſs of Quarantine, or ſhall knowingly and watchman,
permit or ſuffer any Perſon, Ship, Goods, or neglecting his duty,
dizes, to depart or be conveyed out of ſuch Houſe,
Ship, or other Place reſpectively appointed for Per-
of Quarantine, unleſs in ſuch Caſes, and by ſuch
as are or ſhall be directed or permitted by ſome
Orders made or to be made as aforeſaid; or if
on directed as aforeſaid to give a Certificate of a or officer giving a
ving duly performed her Quarantine or Airing, falſe certifi-
wingly give a falſe Certificate, then, and in every cate, to ſuf-
id Caſes, every ſuch Officer and Perſons ſo offend- fer death.
l ſuffer Death as in Caſes of Felony, without Be-
lergy.

ND be it further enacted by the Authority afore- Perſons
t if any Perſon or Perſons ſhall knowingly or wil- concealing or clandeſ-
nceal from the Officers of Quarantine, or ſhall tinely con-
ely convey any Letters, Goods, Wares, or Mer- veying let-
s, from any Ship under Quarantine, or liable to ters or goods from
Quarantine, by any ſuch Order to be made as any ſhip
, or from any Lazaret or other Place where Goods under quarantine, or
erforming Quarantine, every ſuch Perſon ſo of- from any
hall ſuffer Death, as in Caſes of Felony, without lazaret, to ſuffer death
f Clergy.

ND whereas it is notorious, that, notwithſtanding
good Laws made to prevent the clandeſtine Im-
of cuſtomable and prohibited Goods and Mer-
s, a pernicious Trade of that Kind is ſtill carried
the moſt Part in open Boats or Veſſels of ſmall
which privately, and in the Night, put into Creeks
t Places on the Coaſt, thereby eſcaping the Ob-
of the Officers of the Cuſtoms, which Practices
e highly detrimental to the Safety of theſe King- During the
ring a Time of Infection; for Prevention thereof, infection in the places
ted by the Authority aforeſaid, That when any herein men-
Great Britain, Ireland, or the Iſles of *Guernſey,* tioned, ſmall veſſels to
Alderney, Sark, or *Mann,* or *France, Spain, Portu-* give ſecuri-
e *Low Countries,* ſhall be infected with the Plague, ty, &c.

GEO. II, 26, c. 6, POLICE, —PLAGUE.

it ſhall and may be lawful to and for His Majeſty, His Heirs, and Succeſſors, by His or Their Proclamation, to prohibit and reſtrain all Small Boats and Veſſels, under the Burden of Twenty Tons, from ſailing or paſſing out of any Port or Place of *Great Britain* or *Ireland*, or the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, and *Mann*, or any of them, until Security be firſt given by the Maſter of every ſuch Boat or Veſſel reſpectively, to the Satisfaction of the principal Officer of the Cuſtoms, or the chief Magiſtrate of the Port or Place from whence ſuch Boat or Veſſel ſhall ſail, by Bond taken to the King, His Heirs, or Succeſſors, with ſufficient Sureties, in the Penalty of Three hundred Pounds, with Condition, that if ſuch Boat or Veſſel ſhall not go to, or touch at, any Country, Port, or Place, to be mentioned for that Purpoſe in ſuch Proclamation; and if the Maſter, or other Perſon having Charge of ſuch Boat or Veſſel, and all and every Mariner and Mariners, Paſſenger and Paſſengers, going in ſuch Boat or Veſſel, ſhall, during the Time aforeſaid, not go on Board any other Ship or Veſſel at Sea; and if ſuch Maſter, or other Perſon having Charge of ſuch Boat or Veſſel, ſhall not permit or ſuffer any Perſon or Perſons to come on Board ſuch Boat or Veſſel at Sea from any other Ship or Veſſel, and ſhall not, during the Time aforeſaid, receive any Goods and Merchandizes whatſoever out of any other Ship or Veſſel, then ſuch Bond ſhall be void, or to ſuch Effect; for the making of which Bond, no Fee or Reward whatſoever ſhall be taken; and in caſe any Boat or Veſſel, for which ſuch Security ſhall be required by ſuch Proclamation, ſhall ſet ſail or paſs out of any Port or Place of *Great Britain* or *Ireland*, or the Iſlands of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, or any of them reſpectively, before ſuch Security be given as aforeſaid, every ſuch Boat or Veſſel ſo ſailing or paſſing out of any Port or Place, contrary to the true Intent and Meaning of this Act, together with her Tackle, Apparel, and Furniture, ſhall be forfeited to the King, His Heirs, and Succeſſors, and ſhall and may be ſeized, ſued for, and recovered in His Majeſty's Court of *Exchequer*, at *Weſtminſter*, *Edinburgh*, or *Dublin*, or in the proper Courts of the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, reſpectively, to the Uſe

Veſſels ſailing without giving ſuch ſecurity, to be forfeited,

and the maſter and crew to forfeit 20l.

lis Majeſty, His Heirs, and Succeſſors; and the Maſ- GEO. II. 26, c. 6, POLICE, —PLAGUE
f, and every Mariner ſailing in, any ſuch Boat or Veſ-
eing thereof lawfully convicted upon his or their Ap-
ance or Default, upon the Oath or Oaths of One or
e credible Witneſs or Witneſſes, by One or more Juſ-
or Juſtices of the Peace where ſuch Offender ſhall be
d (which Oath ſuch Juſtice or Juſtices of the Peace
ereby impowered and required to adminiſter), ſhall
it the Sum of Twenty Pounds; One Moiety thereof
e Informer, the other Moiety to the Poor of the Pa-
where ſuch Offender ſhall be found; the ſame to be
d by Diſtreſs and Sale of the Offender's Goods, by
rant under the Hand and Seal, or the Hands and Seals
ch Juſtice or Juſtices before whom ſuch Offender ſhall
onvicted, as aforeſaid; and for want of ſufficient Diſ-
, every ſuch Offender ſhall, by ſuch Juſtice or Juſtices,
ommitted to Priſon, there to remain without Bail or
nprize, for the Space of Three Months; and in caſe
ſuch Offender ſhall be found in any of the ſaid Iſles of
rſey, Jerſey, Alderney, Sark, or *Mann*, and ſhall be
ully convicted of ſuch Offence in any Action or Suit
e founded on this Act, in the proper Court of any of
ſaid Iſles where he ſhall be ſo found, ſuch Offender ſhall
it the Sum of Twenty Pounds; One Moiety thereof
e Informer, and the other Moiety to the Poor of the
ſh or Place where ſuch Offender ſhall be found; and,
default of paying ſuch Penalty, ſhall ſuffer Impriſon-
t, without Bail or Mainprize, for the Space of Three
ths.

, AND to the end that all Perſons may know how to
ean themſelves in the Premiſes, be it further enacted
he Authority aforeſaid, That when, and as often as, Orders concerning quarantine to be read in all churches.
Majeſty, His Heirs, or Succeſſors, ſhall make any Or-
or Orders concerning Quarantine, and the Prevention
Infection, and notify the ſame by Proclamation, or
e the ſame to be publiſhed in the *London Gazette*, as
eſaid; ſuch Proclamation, or Order or Orders in Coun-
as aforeſaid, ſhall be publicly read upon the next *Sun-*
on which Divine Service ſhall be performed after the
eipt of the ſame, and the firſt *Sunday* in every Month
rwards (during the Time ſuch Orders ſhall continue

GEO. II, 6, c. 26, POLICE, —PLAGUE.

in Force) immediately after the Prayers, in all Parish Churches, and other Places ſet apart for Divine Worſhip, within ſuch Counties and Places as ſhall be ſpecified for that Purpoſe in ſuch Proclamation or Orders reſpectively.

General iſſue.

21, AND be it further enacted by the Authority aforeſaid, That if any Action or Suit ſhall be commenced againſt any Perſon or Perſons for any Thing done in purſuance of this preſent Act, the Defendant or Defendants in ſuch Action or Suit may plead the General Iſſue, and give this Act, and the Special Matter in Evidence, at any Trial to be had thereupon; and that the ſame was done in purſuance, and by the Authority of the ſaid Act; and if it ſhall appear ſo to have been done, then the Jury ſhall find for the Defendant or Defendants; and if the Plaintiff ſhall be Nonſuited, or diſcontinue his Action, after the Defendant or Defendants ſhall have appeared; or if Judgment ſhall have been given upon any Verdict or Demurrer againſt the Plaintiff, the Defendant or Defendants ſhall and may recover Treble Coſts, and have the like Remedy for the ſame, as the Defendant or Defendants hath or have in other Caſes by Law.

Treble coſts.

Limitation of attainder of felony on this act.

22, PROVIDED always, and it is hereby enacted, That no Attainder of Felony, by virtue of this Act, ſhall extend to work any Corruption of Blood, or Forfeiture of any Goods, Chattels, Lands, Tenements, or Hereditaments.

Commencement of this act.

23, AND it is hereby further enacted by the Authority aforeſaid, That this Act, and the ſeveral Clauſes and Proviſions therein contained, ſhall commence and take Effect from and after the Firſt Day of *March*, One thouſand ſeven hundred and fifty-four.

No. LVII.

GEO. III, 39 and 40, c. 80. *An Act for erecting a Lazaret on Chetney Hill, in the County of Kent; and for reducing into One Act the Laws relating to Quarantine, and for making further Provision therein.*

[HERE follows a narrative of the ſtatutes, 39 Geo. III, c. 99; 26 Geo. II, c. 6; 12 Geo. III, c. 37.] Be it therefore enacted, &c. That it ſhall and may be lawful for the Lords Commiſſioners of His Majeſty's Treaſury, or any Three or more of them, or the Lord High Treaſurer for the Time being, from and after the paſſing of this Act, to give Directions, and make any Contract or Contracts for erecting or cauſing to be erected a Lazaret upon the ſaid Lands ſo purchaſed on Chetney Hill, in the County of Kent, with all neceſſary and convenient Accommodations for the Purpoſe of performing Quarantine, according to ſuch Plan as His Majeſty, by and with the Advice of His Privy Council, may from Time to Time approve and direct; and for defraying the Expences attending the ſame, to cauſe any Sum of Money to be iſſued out of the Conſolidated Fund, not exceeding in the Whole the Sum of Sixty-five thouſand Pounds, of which a Part, not exceeding Thirty thouſand Pounds, may be iſſued within the Space of Twelve Months from the paſſing of this Act; and the ſaid Lazaret when completed, and all the Buildings and Accommodations thereto belonging, and until the ſame ſhall be completed, the ſaid Floating Lazaret ſhall be under the Management, Order, and Direction, of ſuch Officers as ſhall be appointed by the Lords Commiſſioners of His Majeſty's Treaſury, or any Three or more of them, or the Lord High Treaſurer for the Time being, for keeping the ſame fit and ready for the Reception of Perſons and Goods, and for their due Performance of Quarantine; and ſuch Officers reſpectively ſhall have ſuch Salaries as ſhall from Time to Time be appointed by His Majeſty, by and with the Advice of His Privy Council; and the Salaries of the

Preamble.

The treaſury may contract for erecting a lazaret upon Chetney Hill, and may defray the expence out of the conſolidated fund.

Lazaret to be under the management of officers appointed by the treaſury, &c.

GEO. III, 39, 40, c. 80, POLICE, —PLAGUE.

said Officers, and all contingent Expences, ſhall be defrayed out of the Funds, and in the Manner in which the Charges and Expences of performing Quarantine are at preſent defrayed, until ſuch Time as a Revenue ſhall be raiſed ſufficient for thoſe Purpoſes, in the Manner herein after mentioned.

From Oct. 1, 1800, the owners of ſhips performing quarantine to pay the duties of cuſtoms herein ſpecified.

2, AND whereas it is reaſonable that the Owners of Ships, Veſſels, and Cargoes, which in future ſhall have to perform Quarantine, ſhould defray the Charge incurred thereby; be it further enacted, That from and after the Firſt Day of October One thouſand eight hundred, there ſhall be raiſed, levied, collected, and paid, to His Majeſty, His Heirs, and Succeſſors, the ſeveral and reſpective Duties of Cuſtoms herein after mentioned; that is to ſay, for every Ton Burthen of every Ship or Veſſel, the Cargo of which, or any Part thereof, ſhall have performed Quarantine in this Kingdom, and which ſhall have arrived from any Part of Turkey, or from any Port or Place in Africa within the Streights of Gibraltar, or in the Weſt Barbary on the Atlantic Ocean, with a clean Bill of Health, Seven Shillings and Sixpence; for every Ton Burthen of every ſuch Ship or Veſſel, which ſhall have ſo arrived without a clean Bill of Health, Fifteen Shillings; for every Ton Burthen of every Ship or Veſſel, the Cargo of which, or any Part thereof, ſhall have performed Quarantine in this Kingdom, and which ſhall have arrived from any Port or Place whatever, except from any Part of Turkey, or from any Port or Place in Africa within the Streights of Gibraltar, or in the Weſt Barbary on the Atlantic Ocean, with a clean Bill of Health, Three Shillings; for every Ton Burthen of every ſuch Ship or Veſſel, which ſhall have ſo arrived without a clean Bill of Health, Ten Shillings; for every Ton Burthen of every Ship or Veſſel arriving in this Kingdom, with a Cargo, which in Whole or in Part ſhall conſiſt of Goods, Wares, or Merchandize, the Growth, Produce, or Manufacture, of Turkey, or of any Port or Place in Africa within the Streights of Gibraltar, or in the Weſt Barbary on the Atlantic Ocean, and which ſhall have performed Quarantine in this Kingdom, and which ſhall have arrived from any Port or Place in Holland, or from any Port or Place whatever at which there is not a

egular Eſtabliſhment for the Performance of Quarantine, Seven Shillings and Sixpence; for every Ton Burthen of every Ship or Veſſel which ſhall have ſo arrived under ſuch Circumſtances as ſhall induce His Majeſty, by and with the Advice of His Privy Council, to ſubject them to the like Quarantine as Ships arriving from Turkey without clean Bills of Health, Fifteen Shillings; for every Ton Burthen of every Ship or Veſſel, the Cargo of which, or any Part thereof, ſhall have performed Quarantine in this Kingdom, and which Ship or Veſſel ſhall enter Inwards in the Port of London, an additional Duty of One Shilling; all which ſeveral and reſpective Duties ſhall be raiſed, levied, collected, and paid, and ſhall be ſued for, recovered, and accounted for, in the ſame manner, and ſubject to the ſame Rules, Regulations, Penalties, and Forfeitures, as any Duties of Cuſtoms are now ſubject to by Law, as far as the ſame are applicable thereto: Provided always, That no Ship or Veſſel arriving in this Kingdom from any Port or Place whatever, except from any Part of Turkey, or from any Part or Place in Africa, within the Streights of Gibraltar, or in the Weſt Barbary on the Atlantic Ocean, with a clean Bill of Health, in Ballaſt, or whoſe Cargo ſhall conſiſt wholly of Salt, ſhall be liable to or charged with any Duty under this Act: Provided alſo, That no Ship or Veſſel which ſhall, together with its Cargo, have duly performed Quarantine in the Lazarets of Malta, Anona, Venice, Meſſina, Leghorn, or one of them, and ſhall ſail from thence, and arrive in this Kingdom with proper Documents and Vouchers atteſting the ſame, to the Satisfaction of His Majeſty, His Heirs or Succeſſors, or of His or Their Privy Council, ſhall be liable to or charged with any Duty under this Act.

GEO. III, 39, 40, c. 80, POLICE, —PLAGUE.

Certain veſſels exempted from payment of ſuch duties.

3, PROVIDED always, That if after the Re-payment (in the Manner herein-after mentioned) to the Conſolidated Fund, of the ſaid Sum of Sixty-five thouſand Pounds, hereby directed to be iſſued out of the ſame, it ſhall appear to the Lord High Treaſurer, or the Lords Commiſſioners of His Majeſty's Treaſury for the Time being, that the Duties hereby granted are more than ſufficient to defray the neceſſary Expences of carying the ſeveral Purpoſes of this Act into Execution, it ſhall and may be law-

The duties may be reduced and afterwards raiſed again.

GEO. III. 39, 40 c. 80, POLICE, —PLAGUE.

ful for the ſaid Lord High Treaſurer, or Lords Commiſſioners for the Time being, from Time to Time, by any Warrant or Warrants under the Hands of the ſaid Lord High Treaſurer, or of the ſaid Lords Commiſſioners for the Time being, or of any Three or more of the ſaid Lords Commiſſioners, to order and direct that the Duties hereby granted ſhall be reduced in ſuch Proportion and Manner as they ſhall think proper; and alſo by like Warrant or Warrants (in caſe the ſaid neceſſary Expences ſhould afterwards require an Increaſe of the ſaid Duties) to order and direct that the ſame ſhall be again raiſed and increaſed to any Amount, not exceeding the Sums hereby authorized to be raiſed and levied; and ſuch Warrant or Warrants ſhall be ſufficient Authority to the Commiſſioners and Officers of the Cuſtoms for raiſing, levying, collecting, and recovering the ſeveral and reſpective Duties ſpecified and contained in ſuch Warrant or Warrants; any Law or Uſage to the contrary notwithſtanding.

No veſſel upon which the duty is impoſed ſhall be cleared inwards unleſs it be firſt paid.

4, THAT no Ship or Veſſel, upon which the Tonnage Duty by this Act impoſed ſhall be due and payable, ſhall be permitted to be cleared Inwards in any Port of *Great Britain*, or the Iſlands of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, unleſs the ſaid Tonnage Duty ſhall have been firſt duly paid to the proper Officers of the Cuſtoms appointed to receive the ſame, or the Commiſſioners of the Cuſtoms ſhall otherwiſe direct; and that the Tonnage of every Ship or Veſſel ſhall be computed and taken, for the Purpoſe of aſcertaining the ſaid Duties according to the Regiſter thereof, under the Proviſions of an Act, paſſed in the Twenty-ſixth Year of His preſent Majeſty's Reign, intituled, *An Act for the further Increaſe and Encouragement of Shipping and Navigation*; and in caſe of any Diſpute or Doubt relative thereto the ſame ſhall be aſcertained by Admeaſurement, in the Mode and Manner preſcribed in the ſaid laſt-mentioned Act.

Tonnage to be aſcertained according to the regiſter under 26 Geo. III, c. 60.

Owners of veſſels may demand from Importers a proportion of duties.

5, THAT it ſhall and may be lawful for the Owner or Owners of any Ship and Veſſel, in reſpect of which any of the Duties impoſed by this Act ſhall have been paid, to demand and receive from the reſpective Importers, Proprietors, or Conſignees of any Goods or Merchandizes brought or imported in any ſuch Ship or Veſſel, ſuch Sum or Sums of Money as ſhall be equal to the juſt and reaſonable Contribution, which the Proportion that ſuch Goods and Merchandize bear to the Tonnage Burthen of the Ship ſhall require,

and no more; ſuch Proportion to be aſcertained according to the Uſage of Merchants in like Caſes. GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

6, THAT the Monies ariſing from the Duties hereby granted, ſhall be paid into the Receipt of His Majeſty's Exchequer, and carried to and made part of the Conſolidated Fund; and that in the Office of the Auditor of the Receipt of His Majeſty's Exchequer, there ſhall be provided and kept a Book or Books, in which all the Monies ariſing from the ſaid Duties, and paid into the ſaid Receipt, ſhall be entered ſeparate and apart from all other Monies paid or payable to His Majeſty, His Heirs or Succeſſors, upon any Account whatſoever. Duties to be paid into the Exchequer, and a ſeparate account to be kept.

7, THAT the Money ſo raiſed, levied, collected, and paid, ſhall be applied in the firſt Place to defray the annual Expences of the ſaid Floating Lazaret and Land Lazaret, and all other annual Expences which ſhall be incurred in the Execution of this Act; and in the next Place, to make good any Money that ſhall have been iſſued from the Conſolidated Fund for the Firſt erecting of the ſaid Lazaret, and for providing the neceſſary and convenient Accommodations thereto belonging in Manner herein-before mentioned, and to no other Purpoſe whatſoever. Application of duties.

8, AND whereas it is expedient that the ſeveral Acts of Parliament now in force for performing Quarantine, ſhould be reduced into One Act, and that further Proviſion ſhould be made for obliging Ships and Perſons coming from Places infected with or ſubject to the Plague, or any infectious Diſeaſe or Diſtemper of the Nature of the Plague, to perform Quarantine in ſuch Manner as ſhall be directed by Proclamation, or by Order of his Majeſty in Council, and for puniſhing Offenders againſt ſuch Orders; be it enacted, That [here follows a Repeal of the Statutes 26. Geo. II, c. 6.; 29 Geo. II, c. 8; 12 Geo. III, c. 57; 28 Geo. III, c. 34; 38 Geo. III, c. 33; 39 Geo. III, c. 99.] From October 1, 1800, the following recited and all other acts, in ſo far as they relate to the performance of quarantine, repealed.

9, AND whereas infectious Diſeaſes and Diſtempers which may not be deemed the Plague, have raged and may rage in Foreign Parts, the Communication whereof may be highly dangerous to the Health of His Majeſty's Subjects of this Kingdom; be it declared and enacted, That it ſhall be lawful for His Majeſty, by and with the Advice of His Privy Council, by His Royal Proclamation, from Time to Time His Majeſty by proclamation may declare any infectious diſeaſe to be of the nature of the plague.

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

to declare any ſuch infectious Diſeaſe or Diſtemper to be of the nature of the plague.

All veſſels, perſons, and goods coming into any place in Great Britain, Guernſey, &c. from any place from whence his Majeſty ſhall judge the plague may be brought, ſhall perform quarantine as ſhall be directed by his Majeſty's orders in council.

10, THAT from and after the Firſt Day of *October* One thouſand eight hundred, all Ships and Veſſels arriving, and all Perſons, Goods, and Merchandizes whatſoever coming or imported into any Port or Place within *Great Britain*, or the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, from any Place from whence His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or Their Privy Council, ſhall judge it probable that the Plague or other infectious Diſeaſe or Diſtemper which His Majeſty, with the Advice of His Privy Council, ſhall from Time to Time declare to be of the Nature of the Plague, may be brought, ſhall be liable and obliged to make their Quarantine in ſuch Place and Places, for ſuch Time and in ſuch Manner as ſhall from Time to Time be directed by His Majeſty, His Heirs or Succeſſors, by His or Their Order or Orders in Council, and notified by Proclamation, or publiſhed in the *London Gazette*, and that until ſuch Ships, Veſſels, Perſons, Goods, and Merchandizes ſhall have reſpectively performed, and ſhall be duly diſcharged from ſuch Quarantine, no ſuch Perſon, Goods, or Merchandizes, or any of them, ſhall come or be brought on Shore, or go or be put on board any other Ship or Veſſel in any Place within His Majeſty's Dominions, unleſs in ſuch Manner, and in ſuch Caſes, and by ſuch Licence, as ſhall be directed or permitted by ſuch Order or Orders made by His Majeſty, His Heirs or Succeſſors, in Council as aforeſaid; and that all ſuch Ships and Veſſels, and the Perſons or Goods coming or imported in, or going or being put on board the ſame, and all Ships, Veſſels, Boats, and Perſons receiving any Goods or Perſons out of the ſame, ſhall be ſubject to ſuch Orders, Rules, and Directions concerning Quarantine, and the Prevention of Infection, as ſhall be made by His Majeſty, His Heirs and Succeſſors, by and with the Advice of His Privy Council, and notified by His Royal Proclamation, or publiſhed in the *London Gazette*.

Rules for veſſels on board which the plague ſhall appear within the Streights of

11, THAT if the Plague, or other infectious Diſeaſe or Diſtemper as aforeſaid, ſhall appear on board any Ship or Veſſel within the *Streights of Gibraltar*, the Maſter, Commander, or other Perſon having Charge thereof, ſhall immediately proceed to ſome one of the Foreign Lazarets, and there perform Quarantine, until ſuch Time as the Land Le-

zaret, to be erected as aforeſaid, ſhall, by His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or their Privy Council, and by Order of the ſame notified by Proclamation, or publiſhed in the *London Gazette*, have been declared to be fit for the due Performance of Quarantine therein; but if ſuch Plague, or other ſuch infectious Diſeaſe or Diſtemper as aforeſaid, ſhall appear on board any Ship or Veſſel without the *Streights of Gibraltar*, then the Maſter, Commander, or other Perſon having the Charge or Command thereof, ſhall (unleſs ſuch Land Lazaret ſhall have been ſo declared to be fit for the due performance of Quarantine therein) immediately proceed to the Harbour of *Saint Helen's Pool*, between the Iſlands of *Saint Helen's Tean* and *North Withel*, being Two of the Iſlands commonly called *The Iſlands of Scilly*, or to ſuch other Place as His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or Their Privy Council, ſhall from Time to Time direct and appoint, where, being arrived, he ſhall make known his Caſe to ſome Officer of the Cuſtoms there, who ſhall immediately acquaint the Governor, Deputy Governor, or other Principal Magiſtrate thereof, and alſo ſome Cuſtom Houſe Officer of ſome Port of *England* near thereunto; and the ſaid Cuſtom Houſe Officer of ſuch near Port in *England* ſhall, with all poſſible Speed, ſend Intelligence thereof to the Commiſſioners of the Cuſtoms in the Port of *London*; and the ſaid Governor, Deputy Governor, or other Principal Magiſtrate, ſhall in like Manner, with all poſſible Speed, ſend Intelligence thereof to One of His Majeſty's Principal Secretaries of State, to the End that ſuch Meaſures may be taken for the Comfort and Support of the Crew and Paſſengers on board ſuch Ship ſo infected, and ſuch Precautions uſed to prevent the ſpreading of the Infection, as the Caſe ſhall require; and the ſaid Ship or Veſſel ſhall there remain until His Majeſty's Pleaſure be known; nor ſhall any of the Crew or Paſſengers on board thereof go on Shore: But in caſe the ſaid Maſter, Commander, or other Perſon having Charge of the ſaid Ship or Veſſel ſo infected, ſhall not be able to make the ſaid Iſlands of *Scilly* or other Place ſo appointed by His Majeſty as aforeſaid, or ſhall be forced by Streſs of Weather, or otherwiſe, to go up either of the Channels, it ſhall not be lawful for him to enter with ſuch Ship or Veſſel into any Port, but he ſhall remain in ſome open Road till he receives Di-

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

Gibraltar or without, till the land lazaret ſhall be fit for the performance of quarantine.

GEO. III. 30, 40, c. 80. POLICE, —PLAGUE.

rections by ſome Order of the Privy Council, and he ſhall uſe every neceſſary Means in his Power to prevent any of his Ship's Company or Paſſengers from going out of his Ship, and to avoid all Intercourſe with other Ships, Veſſels, or Perſons; and ſuch Ship's Company or Paſſengers ſhall, until ſuch Maſter, Commander, or other Perſon ſhall have received ſuch Directions, remain in ſuch Ship, and ſhall avoid all Intercourſe with other Ships, Veſſels, or Perſons; and the ſaid Maſter or any other Perſon on board ſuch Ship or Veſſel as aforeſaid, who ſhall be diſobedient herein, ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as in Caſes of Felony, without Benefit of Clergy.

Maſters of veſſels, &c. diſobedient herein, ſhall ſuffer death.

Maſters of veſſels liable to performance of quarantine, meeting other veſſels at ſea, or being within four miles of the coaſt of Great Britain, Ireland, Guernſey, &c. to hoiſt a ſignal, on penalty of 200l.

12, THAT every Commander, Maſter, or other Perſon having the Charge of any Ship or Veſſel liable to the Performance of Quarantine, ſhall be and is hereby required, from and after the Firſt Day of *October* One thouſand eight hundred, at all Times when ſuch Ship or Veſſel ſhall meet with any other Ship or Veſſel ot Sea, or ſhall be within Four Leagues of the Coaſt of *Great Britain* or *Ireland*, or the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, to hoiſt a Signal to denote that his Ship or Veſſel is liable to the Performance of Quarantine, which Signal ſhall be in the Day Time, if the ſaid Ship or Veſſel ſhall have a clean Bill of Health, a large Yellow Flag of Six Breadths of Bunting at the Main Topmaſt Head; and if ſuch Ship or Veſſel ſhall not have a clean Bill of Health, then a like Yellow Flag, with a circular Mark or Ball entirely Black thereon, whoſe Diameter ſhall be equal to Two Breadths of Bunting, and in the Night Time the Signal ſhall, in both Caſes, be a large Signal Lantern, ſuch as is commonly uſed on board His Majeſty's Ships of War, with a Light at the ſame Maſt Head, and ſuch Commander, Maſter, or other Perſon ſhall keep ſuch Signals reſpectively, as the Caſe ſhall be, hoiſted during ſuch Time as the Ship or Veſſel ſhall continue within Sight of ſuch other Ship or Veſſel, or within Four Leagues of the ſaid Coaſts or Iſlands, and while ſo in Sight or within ſuch Diſtance, until ſuch Ship or Veſſel ſhall have arrived at the Port or Place where it is to perform Quarantine, and until it ſhall have been legally diſcharged from the Performance of Quarantine, on Failure whereof ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel ſo liable to the

Performance of Quarantine ſhall forfeit and pay, for every ſuch Offence, the Sum of Two hundred Pounds. GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

13, THAT if any Maſter, Commander, or other Perſon having the Charge or Command of any Ship or Veſſel, not liable to the Performance of Quarantine, ſhall hoiſt ſuch Yellow Flag, whereby other Ships may be put to the Inconvenience of changing their Courſe, ſuch Maſter, Commander, or other Perſon as aforeſaid, ſhall forfeit and pay the Sum of Fifty Pounds. Penalty of 50l. on maſters of veſſels not liable to quarantine hoiſting a yellow flag.

14, THAT in caſe any Pilot ſhall bring or conduct, or cauſe to be brought and conducted, any Ship or Veſſel liable to the Performance of Quarantine, into any Place which is not, or which ſhall not be ſpecially appointed for the Reception of Ships and Veſſels ſo liable to the Performance of Quarantine, unleſs compelled by Streſs of Weather, adverſe Winds, or Accidents of the Seas, ſuch Pilot ſhall, for each and every ſuch Offence, forfeit and pay the Sum of One hundred Pounds. Pilots conducting veſſels liable to quarantine into places not appointed, to forfeit 100l.

15, AND, to the End that it may be the better known whether any Ship or Veſſel be actually infected with the Plague, or other infectious Diſeaſe or Diſtemper as aforeſaid, or whether ſuch Ship or Veſſel, or the Mariners or Paſſengers coming, or the Cargo imported in the ſame, are liable to any Orders touching Quarantine: Be it further enacted, That when any Country or Place ſhall be infected with the Plague, or other ſuch infectious Diſeaſe or Diſtemper as aforeſaid, or when any Order or Orders ſhall be made by His Majeſty in Council concerning Quarantine, and the Prevention of Infection as aforeſaid, then and in ſuch Caſe, as often as any Ship or Veſſel ſhall attempt to enter into any Port or Place in *Great Britain*, or of the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Mann*, whether ſuch Port ſhall have been appointed for the Performance of Quarantine or not, the Principal Officer of His Majeſty's Cuſtoms in ſuch Port or Place, or ſuch Perſon as ſhall be authorized to ſee Quarantine duly performed, ſhall go off, or cauſe ſome other Perſon to be by him appointed for that Purpoſe to go off, to ſuch Ship or Veſſel, and ſuch Officer or other Perſon authorized to ſee Quarantine performed as aforeſaid, or the Perſon ſo by him appointed for that Purpoſe, ſhall, at a convenient Diſtance from ſuch Ship or Veſſel, demand of the Commander, Maſter, or other Perſon having Charge of ſuch When any place ſhall be infected with the plague, or when any order ſhall be made by his Majeſty concerning quarantine, the perſon authorized to ſee it performed at the place, ſhall demand certain queſtions of the maſter of every veſſel, who, for refuſal ſhall forfeit 200l.

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

Ship or Veſſel, and ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel ſhall, upon ſuch Demand, give a true Anſwer in Writing or otherwiſe, and upon Oath or not upon Oath, according as he ſhall by ſuch Officer or other Perſon be required, to all ſuch Queſtions and Interrogatories as ſhall be put to him, by virtue and in purſuance of ſuch Regulations and Directions as His Majeſty, by Order in Council, ſhall be pleaſed to preſcribe; and in caſe ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel ſhall, upon ſuch Demand made as aforeſaid, refuſe to make a true Diſcovery in any of the Particulars concerning which he ſhall be interrogated in Manner aforeſaid, ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, for every ſuch Offence ſhall forfeit and pay the Sum of Two hundred Pounds.

If it ſhall appear that any ſuch veſſel is liable to perform quarantine, the officers of any ſhip of war, &c. ſhall compel it to go to the appointed place.

16, THAT in caſe it ſhall appear upon ſuch Examination or otherwiſe, that ſuch Ship or Veſſel is under ſuch Circumſtances as ſhall render it liable to perform Quarantine, and that the Port where it ſo arrives is not the Port where it ought ſo to perform Quarantine, in ſuch Caſe it ſhall and may be lawful to and for the Officers of any of His Majeſty's Ships of War, or any of His Majeſty's Forts or Garriſons, and all other His Majeſty's Officers whom it may concern, upon Notice thereof given to them, or any of them reſpectively, and to and for any other Perſon or Perſons whom they ſhall call to their Aid and Aſſiſtance; and ſuch Officers and other Perſons are hereby required to oblige ſuch Ship or Veſſel to go and repair to ſuch Place as hath been or ſhall be appointed for Performance of Quarantine, and to uſe all neceſſary Means for that Purpoſe, either by firing of Guns upon ſuch Ship or Veſſel, or by any other Kind of neceſſary Force whatſoever; and in caſe any ſuch Ship or Veſſel ſhall come from any Place viſited with the Plague, or other infectious Diſeaſe or Diſtemper as aforeſaid, or ſhall have any Perſon on board actually infected, and the Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel ſhall conceal the ſame, ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as in Caſes of Felony, without Benefit of Clergy.

Maſters of veſſels concealing infected perſons on board, ſhall ſuffer death.

17, THAT every Maſter, Commander, or other Perſon having Charge of any Ship or Veſſel which ſhall be ordered to perform Quarantine as aforeſaid, ſhall forthwith, after his Arrival at the Place appointed for the Performance of his Quarantine, deliver on Demand to the Chief Officer appointed to ſee Quarantine Duty performed there, or Perſon acting for him, and which Officer or Perſon is hereby required to make ſuch Demand, ſuch Bill of Health and Manifeſt as he ſhall have received from any *Britiſh* Conſul during his Voyage, together with his Log Book and Journal, under Pain of forfeiting the Sum of Five hundred Pounds if he ſhall wilfully refuſe and neglect ſo to do.

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE. Bill of health to be delivered to the officer, &c. on penalty of 500l.

18, THAT every Maſter, Commander, or other Perſon having the Charge or Command of any Ship or Veſſel liable to perform Quarantine, ſhall deliver to the Conſul or other Perſon acting as ſuch, and where there is none ſuch reſiding there, then to Two known *Britiſh* Merchants at the Port at which he ſhall take on board any Articles, a Liſt, Schedule, or Manifeſt, retaining One or more true Copies thereof in his own Poſſeſſion, of all ſuch Articles of every Deſcription, whether brought as Baggage, Preſents, or otherwiſe, and of all Packets, Parcels, or Letters, which Liſt, Schedule, or Manifeſt, ſhall by him be verified on Oath, and ſubſcribed before the *Britiſh* Conſul, or other Perſon or Merchants as aforeſaid, who ſhall atteſt the ſame by ſubſcribing his or their Name or Names thereto; and ſuch *Britiſh* Conſul, or other Perſon or Merchants as aforeſaid, ſhall tranſmit the ſaid Liſt, Schedule, or Manifeſt ſo ſigned by him or them, as the Caſe may be, to the Commiſſioners of the Cuſtoms in the Port of *London*, for their Information; and the ſaid Maſter, Commander, or other Perſon as aforeſaid, on his Arrival in this Kingdom, ſhall declare upon Oath before the Collector or Principal Officer of the Cuſtoms at the Port where he ſhall arrive, or at the Port neareſt thereto, that he has not received any Goods, Packages, or Articles whatever on board, either as Baggage, Preſents, or otherwiſe, nor any Letter or Packets, or Parcels of Letters, but ſuch as are ſpecified in ſuch Liſts, Schedules, or Manifeſts; and in caſe the Maſter, Commander, or other Perſon as aforeſaid, ſhall not, on Demand by ſuch Collector or Principal Officer of the Cuſtoms, produce all or any of the Articles ſo ſpecified in ſuch Liſts, Schedules, or Manifeſts as afore-

Manifeſt to be delivered to the Conſul. If there be no Conſul, then to two Britiſh merchants. Their duty. Penalty on maſters not producing all ſuch articles.

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

ſaid, or make it appear that the ſame have been unavoidably loſt, deſtroyed, or conſumed, ſuch Maſter, Commander, or other Perſon, ſhall forfeit and pay, for every ſuch Default, a Sum not exceeding the Sum of Five hundred Pounds nor leſs than the Sum of One hundred Pounds; and if any Perſon ſhall land or unſhip, or ſhall move, in order to the landing or unſhipping thereof, any Goods, Wares, or Merchandize, or any ſmall Articles brought as Baggage, Preſents, or otherwiſe, or any Letters or Packets, or Parcels of Letters whatever from on board ſuch Ship or Veſſel, or ſhall receive the ſame after they have been ſo landed or unſhipped, he ſhall forfeit and pay a Sum not exceeding the Sum of Five hundred Pounds, nor leſs than the Sum of One hundred Pounds.

Penalty on perſons landing, or receiving any articles from on board ſuch veſſels.

Maſters quitting, or ſuffering perſons to quit veſſels, before quarantine be performed.

19, THAT if any Commander, Maſter, or other Perſon having Charge of any Ship or Veſſel liable to perform Quarantine, and having Notice that ſuch Ship or Veſſel is ſo liable, ſhall himſelf quit, or ſhall knowingly permit or ſuffer any Seaman or Paſſenger coming in ſuch Ship or Veſſel to quit ſuch Ship or Veſſel, by going on Shore, or by going on board any other Ship, Boat or Veſſel, before ſuch Quarantine ſhall be fully performed, unleſs in ſuch Caſes, and by ſuch proper Licence as ſhall be directed and granted by and by virtue of ſuch Order or Orders made or to be made concerning Quarantine, and the Prevention of Infection as aforeſaid; or in caſe any Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, ſhall not, within a convenient Time after due Notice given for that Purpoſe, cauſe ſuch Ship or Veſſel, and the Lading thereof, to be conveyed into the Place or Places appointed for ſuch Ship, Veſſel, and Lading, to perform their Quarantine reſpectively; then and in every ſuch Caſe every ſuch Maſter, Commander, or other Perſon as aforeſaid, for every ſuch Offence ſhall forfeit and pay the Sum of Five hundred Pounds; and if any Perſon ſhall ſo quit ſuch Ship or Veſſel by going on Shore, or by going on board any other Ship or Veſſel contrary to the true Meaning of this Act, it ſhall and may be lawful for all Perſons whatſoever, by any Kind of neceſſary Force, to compel ſuch Perſon to return on Board ſuch Ship or Veſſel; and every ſuch Perſon ſo quitting ſuch Ship or Veſſel ſhall, for every ſuch Offence, ſuffer Impriſonment for the Space of

Perſons quitting ſuch veſſels may be compelled to return on board.

ix months, and ſhall alſo forfeit and pay the Sum of Two undred Pounds. GEO. III. 39, 40, c. 80, POLICE, —PLAGUE.

20, THAT when any Ship or Veſſel which has performed uarantine in any Foreign Lazaret, ſhall arrive in any of ie Ports of *Great Britain*, or the Iſles of *Guernſey*, *Jerſey*, *lderney*, *Sark*, or *Man*, with a clean Bill of Health, no oods or Merchandize liable to retain the Infection of the lague, or other infectious Diſeaſe or Diſtemper as afore- id, ſhall be permitted to be landed or unſhipped, unloaded r moved, in order to be landed out of ſuch Ship or Veſſel, ut the Maſter, Commander, or other Perſon having the harge or Command of ſuch Ship or Veſſel ſhall, imme- iately upon his Arrival, give Notice thereof, and of the ontents of his Liſts, Schedules, or Manifeſts as aforeſaid, id of the Foreign Port in which ſuch Ship or Veſſel hath erformed Quarantine, to the Principal Officer of His Ma- ſty's Cuſtoms at the Port where he ſhall arrive, or at the ort neareſt thereto, in order that the ſame may be forth- ith laid before His Majeſty's Privy Council; and if the aſter, Commander, or other Perſon as aforeſaid, or any erſon whatſoever, ſhall land, or ſhall unſhip, unload, or ove, in order to land any Goods or Merchandize out of e ſaid Ship or Veſſel, before an Order of His Majeſty's ivy Council ſhall be made, giving Directions therein, or herwiſe than ſhall be directed in the ſaid Order, every ch Perſon ſhall, for every ſuch Offence, forfeit and pay e Sum of Two hundred Pounds.

When a veſſel arrives with a clean bill of health, the maſter ſhall give notice thereof, &c.

Penalty of 200l. for landing goods before an order of council is made, or contrary thereto.

21, AND whereas Diſobedience or refractory Behaviour Perſons under Quarantine, may be attended with very eat Danger to His Majeſty's Subjects; be it further en- ted, That all Perſons liable to perform Quarantine, whe- er in Ships or in a Lazaret, or elſewhere, ſhall be ſubject, uring the ſaid Quarantine, to ſuch Orders as they ſhall ceive from the proper Officers authorized to direct and perintend the due Performance thereof; and the ſaid Offi- rs are hereby empowered and required to enforce all eceſſary Obedience to the ſaid Orders; and in caſe of Ne- ſſity to call in others to their Aſſiſtance; and all Perſons called in are hereby required to aſſiſt accordingly; and ch Officers ſhall, and they are hereby required to aſſiſt cordingly; and ſuch Officers ſhall, and they are hereby mpowered and required to compel all Perſons obliged to

Officers may enforce obedience, and call in aid.

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

perform Quarantine as aforeſaid, to repair and to cauſe all Goods and Merchandizes comprized within any ſuch Orders made or to be made as aforeſaid, to be conveyed to the ſaid Lazaret or other Place duly appointed in that Behalf, in ſuch Manner, and according to ſuch Directions as ſhall be made by Order of His Majeſty in Council as aforeſaid; and if any Perſon obliged to perform Quarantine as aforeſaid ſhall wilfully refuſe or neglect to repair within convenient Time, after due Notice for that Purpoſe given to him or her by the proper Officer to the ſaid Lazaret, or other Place duly appointed for him or her, or having been placed in the ſaid Lazaret or other Place ſhall eſcape, or attempt to eſcape out of the ſame before Quarantine duly performed, it ſhall and may be lawful to and for the Watchmen and other Perſons appointed to ſee Quarantine performed, and they are hereby required, by ſuch neceſſary Force as the Caſe ſhall require, to compel every ſuch Perſon ſo refuſing or neglecting as aforeſaid, and every ſuch Perſon ſo eſcaping or attempting to eſcape as aforeſaid, to repair or return into ſuch Lazaret or other Place ſo appointed for him or her as aforeſaid; and every Perſon ſo refuſing or neglecting to repair, within convenient Time after ſuch Notice as aforeſaid, into the ſaid Lazaret or other Place, and alſo every Perſon actually eſcaping as aforeſaid, ſhall be adjudged guility of Felony, and ſuffer Death as in Caſes of Felony, without Benefit of Clergy.

If any perſon ſhall neglect duly to repair to the place appointed for him, or ſhall eſcape, he ſhall be compelled to return, and every perſon refuſing to return, or eſcaping, ſhall ſuffer death.

Officers of the Cuſtoms, &c. for breach or neglect of duty ſhall forfeit their office, and 100l.; and if they ſhall deſert or give falſe certificates, they ſhall ſuffer death.

22, THAT if any Officer of His Majeſty's Cuſtoms, or any other Officer or Perſon whatſoever to whom it doth or ſhall appertain to execute any Order or Orders made or to be made concerning Quarantine, or the Prevention of Infection, and notified as aforeſaid, or to ſee the ſame put in Execution, ſhall be guilty of any wilful Breach or Neglect of Duty in that Behalf, every ſuch Officer and Perſon ſo offending ſhall forfeit ſuch Office or Employment as he may be poſſeſſed of, and ſhall become from thenceforth incapable to hold or enjoy the ſame, or to take a new Grant thereof, and every ſuch Officer and Perſon ſhall forfeit and pay the Sum of One hundred Pounds; and if any ſuch Officer or Perſon ſhall deſert from his Duty when employed as aforeſaid, or ſhall knowingly and willingly permit any Perſon, Ship, Veſſel, Goods, or Merchandize, to depart or be conveyed out of the ſaid Lazaret, Ship, or other Place as aforeſaid, unleſs by Permiſſion under an Order of His Majeſty,

and with the Advice of His Privy Council, or if any erſon hereby authorized and directed to give a Certificate a Ship having duly performed Quarantine or Airing, ſhall owingly give a falſe Certificate thereof, every ſuch Offi- r and Perſon ſo offending ſhall be deemed guilty of Fe- ny, and ſuffer Death as in Caſes of Felony, without Benefit Clergy; and if any ſuch Officer or Perſon ſhall knowing- and wilfully damage any Goods performing Quarantine nder his Direction, he ſhall be liable to pay Treble Da- ages and full Coſts of Suit to the Owner of the ſame.

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

Penalty for wilfully damaging goods performing quarantine.

23, THAT if any Perſon not infected with the Plague, or her infectious Diſeaſe or Diſtemper as aforeſaid, nor able to perform Quarantine, ſhall enter the ſaid Lazaret or her Place ſo appointed as aforeſaid, whilſt any Perſon or erſons infected with the Plague, or being under Quaran- ne, ſhall be therein, and ſhall return or attempt to return om thence, unleſs in ſuch Caſes and by ſuch Licence as all be directed and granted by virtue of ſuch Order or rders of His Majeſty in Council as aforeſaid, it ſhall and ay be lawful to and for the Watchmen or other Perſons pointed to guard or ſecure the ſaid Lazaret or other Place appointed as aforeſaid, by ſuch neceſſary Force as the aſe ſhall require, to compel ſuch Perſon ſo returning or tempting to return, to repair into the ſaid Lazaret or other lace ſo appointed as aforeſaid, there to continue and per- rm Quarantine; and in caſe ſuch Perſon ſhall actually cape out of the ſaid Lazaret or other Place where he or e ſhall be ſo placed for Performance of Quarantine, before e or ſhe ſhall have fully performed the ſame, he or ſhe ſhall e adjudged guilty of Felony, and ſhall ſuffer Death as in aſes of Felony, without Benefit of Clergy.

If any found perſon ſhall enter a lazaret, he ſhall perform quarantine; and if he eſcape, he ſhall ſuffer death.

24, AND whereas certain Sorts of Goods and Merchand- es are more eſpecially liable to retain Infection, and may e brought from Places infected into other Countries, and om thence imported into His Majeſty's Dominions in Ships ot obliged to perform Quarantine, be it enacted, That all uch Goods and Merchandizes as ſhall be particularly ſpeci- ied for that Purpoſe in any Order or Orders of His Majeſty n Council, made or to be made concerning Quarantine, and he Prevention of Infection as aforeſaid, which ſhall be im- orted into any of His Majeſty's Dominions from any Fo- eign Country or Place in any Ship or Veſſel whatſoever,

Goods, when ſpecified in any order in council as liable to retain infection, ſhall be liable to quarantine.

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

shall be subject and liable to such Regulations and Restrictions as shall be made by Order of His Majesty in Council respecting the same, for performing Quarantine and the Prevention of Infection as aforesaid.

After proof of the performance of quarantine, and on certificate to that effect, vessels and persons not liable to farther restraint.

25, THAT after Quarantine shall have been duly performed by any Ship or Vessel, Person or Persons obliged to perform Quarantine as aforesaid, according to this Act, and to such Order or Orders made as aforesaid, and upon Proof to be made by the Oaths of the Master or other Person having Charge of such Ship or Vessel, and of Two of the Persons belonging thereto, or upon Proof to be made by the Oaths of Two or more credible Witnesses before the Collector, or Principal Officer of the Customs at the Port where such Quarantine shall be performed, or at the Port nearest thereunto, or before any Justice of the Peace living near to the Port or Place, or when such Quarantine shall have been performed, within any of the said Isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, before any Two Jurats or Magistrates of any of the said Isles respectively, that such Ship or Vessel, and all and every such Person and Persons respectively, have duly performed Quarantine as aforesaid, and that the Ship or Vessel, and all and every Person and Persons are free from Infection, and after producing a Certificate to that Purpose, signed by the Chief Officer who superintended the Quarantine of the said Ship, or Person acting for him, then and in the said respective Cases, such Collector, or Principal Officer of the Customs, or such Justice of the Peace, or such Jurats or Magistrates as aforesaid respectively, are hereby required to give a Certificate thereof; and thereupon such Ship or Vessel, and all and every such Person and Persons so having performed Quarantine, shall be liable to no further Restraint or Detention upon the same Account for which such Ship or Vessel, Person or Persons, shall have performed Quarantine as aforesaid.

Goods to be opened and aired; and on certificate of proof of compliance, they shall be discharged from restraint.

26, THAT all Goods, Wares, and Merchandizes liable to Quarantine as aforesaid, shall be opened and aired in such Place or Places, and for such Time and in such Manner as shall be directed by His Majesty, His Heirs and Successors, by such Order or Orders to be made as aforesaid; and after such Orders shall have been duly complied with, a Certificate thereof shall be given by the Chief Officer appointed to superintend the Quarantine, and airing of such Goods,

Wares, and Merchandizes, or by the Perſon acting for him, and Proof thereof ſhall be made by the Oaths of Two or more credible Witneſſes before the Collector or other Principal Officer of the Cuſtoms at the Port lying next to ſuch Place or Places where ſuch Goods, Wares, or Merchandizes ſhall have been opened and aired as aforeſaid, or before any Juſtices of the Peace living near the ſame, or before any Two Jurats or Magiſtrates of the ſaid Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, reſpectively, which Collector, or other Principal Officer, or ſuch Juſtice, or Two Jurats or Magiſtrates reſpectively, as the Caſe may be, ſhall alſo make Certificate of ſuch Proof having been made; and upon the Production of ſuch Certificates to His Majeſty's Commiſſioners of the Cuſtoms in *England* or *Scotland* reſpectively, or to the Governor or Lieutenant-Governor, Commander in Chief, or Chief Magiſtrate of any of the ſaid laſt-mentioned Iſlands, as the Caſe may be, ſuch Goods, Wares, and Merchandize ſhall be forthwith diſcharged from any Reſtraint or Detention upon the ſame Account, by Order of the ſaid Commiſſioners, or any Three or more of them, or of the ſaid Governor, Lieutenant-Governor, Commander in Chief, or Chief Magiſtrate reſpectively.

GEO. III. 30, 40, c. 80. POLICE, —PLAGUE.

27, THAT if any Perſon ſhall knowingly and wilfully forge or counterfeit, or procure to be forged or counterfeited, any Certificate directed and required to be granted by this Act, or ſhall publiſh as true any ſuch forged or counterfeited Certificate, knowing the ſame to be forged or counterfeited, he ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as in Caſes of Felony, without Benefit of Clergy.

Perſons forging certificate, &c. ſhall ſuffer death.

28, THAT if any Perſon or Perſons ſhall knowingly or wilfully conceal from the Officers of Quarantine, or ſhall clandeſtinely convey any Letters, Goods, Wares, or Merchandizes in or from any Ship under Quarantine, or liable to perform Quarantine, or from the ſaid Lazaret, or other Place where Goods ſhall be performing Quarantine, every ſuch Perſon ſo offending ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as in Caſes of Felony, without Benefit of Clergy.

Perſons concealing articles, &c. ſhall ſuffer death.

29, THAT in caſe it ſhall at any Time happen that any Part of *Great Britain*, *Ireland*, or the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, or *France*, *Spain*, *Portugal*, or the Low Countries, ſhall be infected with the Plague, or

During the plague in certain parts veſſels under 20.

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

any other infectious Diſeaſe or Diſtemper as aforeſaid, it ſhall and may be lawful to and for His Majeſty, His Heirs and Succeſſors, by His or their Proclamation, to prohibit and reſtrain all ſmall Boats and Veſſels, under the Burthen of Twenty Tons, from ſailing or paſſing out of any Port or Place of *Great Britain*, or the Iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, and *Man*, or any of them, until Security be firſt given by the Maſter of every ſuch Boat or Veſſel reſpectively, to the Satisfaction of the Principal Officer of the Cuſtoms, or the Chief Magiſtrate of the Port or Place from whence ſuch Boat or Veſſel ſhall ſail, by Bond taken by ſuch Officer or Magiſtrate, to the King, His Heirs or Succeſſors, with ſufficient Sureties, in the Penalty of Three hundred Pounds, with Condition that if ſuch Boat or Veſſel ſhall not go to or touch at any Country, Port, or Place to be mentioned for that Purpoſe in ſuch Proclamation; and if neither the Maſter or other Perſon having Charge of ſuch Boat or Veſſel, nor any Mariner or Paſſenger in ſuch Boat or Veſſel ſhall, during the Time aforeſaid, go on board any other Ship or Veſſel at Sea; and ſuch Maſter or other Perſon having Charge of ſuch Boat or Veſſel ſhall not permit or ſuffer any Perſon or Perſons to come on board ſuch Boat or Veſſel at Sea from any other Ship or Veſſel, and ſhall not, during the Time aforeſaid, receive any Goods and Merchandizes whatſoever out of any other Ship or Veſſel, then ſuch Bond ſhall be void, for the making of which Bond no Fee or Reward whatſoever ſhall be taken; and in caſe any Boat or Veſſel, for which ſuch Security ſhall be required by ſuch Proclamation, ſhall ſet ſail or paſs out of any Port or Place of *Great Britain*, or the Iſlands of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, and *Man*, or any of them reſpectively, before ſuch Security be given as aforeſaid, every ſuch Boat or Veſſel ſo ſailing or paſſing out of any Port or Place, contrary to the true Intent and Meaning of this Act, together with her Tackle, Apparel, and Furniture, ſhall be forfeited to His Majeſty, His Heirs and Succeſſors; and the Maſter of, and every Mariner ſailing in any ſuch Boat or Veſſel ſhall ſeverally forfeit and pay the Sum of Twenty Pounds.

Boats and Veſſels under the Burthen of Twenty Tons may be prohibited from ſailing until ſecurity be given with certain conditions.

If any ſuch veſſel ſhall ſail before ſecurity be given it ſhall be forfeited, and 20l. by the maſter and each mariner on board.

30, THAT the Publication in the *London Gazette* of any Order of Council made in purſuance of this Act, or His Majeſty's Royal Proclamation made in purſuance of the ſame, ſhall be deemed and taken to be ſufficient Notice to

Publication in the London Gazette to be ſufficient notice.

all Perſons concerned, of all Matters therein reſpectively contained. GEO. III, 39, 40, c. 80, POLICE, —PLAGUE.

31, THAT all Forfeitures and Penalties aforeſaid, that ſhall be incurred by any Offence committed againſt any Part of this Act, ſhall and may be recovered by Suit in any of His Majeſty's Courts of Record at *Weſtminſter*, in which no Eſſoign, Wager of Law, or more than One Imparlance ſhall be granted, or in *Scotland* by ſummary Action in the Court of Seſſion, or by Proſecution before the Court of Juſticiary there, or by Suit in any of His Majeſty's Courts in the Iſlands of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, by or by Information before any Two Juſtices of the Peace of the County, Riding, Diviſion, City, or Place where the Offence was committed, and may be levied of the Offender's Goods and Chattels, and if he ſhall not have Goods and Chattels equal in Value to the Amount of ſuch Forfeiture or Penalty, then ſuch Offender ſhall be committed to Gaol till Payment thereof, and every ſuch Forfeiture and Penalty ſhall belong and be given, one Moiety to the Perſon who ſhall ſue for the ſame, and the other Moiety to His Majeſty, His Heirs and Succeſſors, to be applied towards defraying the Expences of erecting and maintaining the Lazaret as aforeſaid. Recovery and application of penalties.

32, THAT in all Caſes wherein by or by virtue and in purſuance of any of the Proviſions of this Act, any Examinations or Anſwers ſhall be directed to be taken or made upon Oath, the Perſon who ſhall by or by virtue of the ſame be authorized and required to take ſuch Examinations and Anſwers, ſhall and ſhall be deemed to have full Power and Authority to adminiſter ſuch Oath; and if any Perſon who ſhall be ſo interrogated or examined, ſhall wilfully ſwear falſely to any Matter concerning which ſuch Perſon ſhall depoſe, or make Oath on ſuch Examination, or if any Perſon ſhall procure any other Perſon ſo to do, he or ſhe ſhall be deemed to have been guilty of, and ſhall be liable to be proſecuted for wilful and corrupt Perjury, or Subornation of wilful and corrupt Perjury, as the Caſe may be; and ſhall ſuffer the Penalties of the Law in ſuch Caſes reſpectively made and provided. Perſons authorized to take examinations may adminiſter oaths. Penalty on perſons ſwearing falſely, or procuring others to do ſo.

33, THAT all Offences committed againſt any of the Proviſions of this Act (not being Felony), and every Offence or Diſobedience to any Order of Council made for better carrying into Execution this Act, for which no ſpecific Penal- Offences, not felonious, againſt this act or any order

GEO. III. 39, 40, c. 80. POLICE, —PLAGUE.

ty, Forfeiture, or Puniſhment is provided by this Act, ſhall and may be tried, heard, and determined before any Two Juſtices of the Peace of the County, Riding, Diviſion, City, or Place where ſuch Offence or Diſobedience ſhall happen; and if any Perſon ſhall be convicted of any ſuch Offence or Diſobedience, he or ſhe ſhall be liable to ſuch Forfeiture and Penalty, not exceeding the Sum of Fifty Pounds for any One Offence, or to ſuch Impriſonment, not exceeding Three Months for any One Offence, as ſhall in the Diſcretion of the Two Juſtices who ſhall have heard and determined the ſame, be judged proper; and ſuch Forfeiture and Penalty ſhall be paid, one Moiety to the Perſon ſuing for the ſame, and the other to His Majeſty, to be applied as the Moieties of other Forfeitures and Penalties are herein before directed to be applied.

of council, may be tried before two juſtices, who may fine or impriſon the offender.

Application of penalty.

No attainder of felony to work corruption of blood, &c.

34, PROVIDED always, That no attainder of Felony by virtue of this Act ſhall be extended to work any Corruption of Blood, or Forfeiture of any Goods, Chattels, Lands, Tenements, or Hereditaments.

Offences upon ſea may be proſecuted within the neareſt county.

35, THAT all Offences committed upon the High Seas againſt this Act, or againſt any Order of Council made for carrying this Act into Execution, ſhall be deemed to be done within the Body of the County neareſt to the Place where ſuch Offence was committed, and ſhall and may be proſecuted within ſuch County.

Defendants may plead the general iſſue.

36, THAT if any Action or Suit ſhall be commenced againſt any Perſon or Perſons for any Thing done in purſuance and Execution of this preſent Act, or of any Order of Council made by virtue thereof, the Defendant or Defendants in ſuch Action or Suit may plead the General Iſſue, and give this Act and the Special Matter in Evidence at any Trial to be had thereupon, and that the ſame was done in purſuance and in the Execution of the ſaid Act; and if it ſhall appear ſo to have been done, then the Jury ſhall find for the Defendant or Defendants; and if the Plaintiff ſhall be nonſuited, or diſcontinue his Action after the Defendant or Defendants ſhall have appeared, or if Judgment ſhall have been given upon any Verdict or Demurrer againſt the Plaintiff, the Defendant or Defendants ſhall and may recover Treble Coſts, and have the like Remedy for the ſame as the Defendant or Defendants hath or have in other Caſes by Law; and that no ſuch Action or

Treble coſts.

Limitation of actions.

Suit ſhall be brought againſt any Perſon for any Matter or Thing done in purſuance or Execution of this Act, but within the Space of Two Years after ſuch Matter or Thing ſhall have been done. GEO. III, 39, 40, c. 80, POLICE, —PLAGUE.

37, THAT this Act ſhall commence and take Effect, except as is herein-before otherwiſe provided, on the Firſt Day of *October* One thouſand eight hundred. Commencement of this act.

No. LVIII.

WILLIAM and MARY, Parl. 1, 1689, c. 3. *Aboliſhing Prelacy.*

WHEREAS the Eſtates of this Kingdom in their Claim of Right, of the Eleventh of April laſt, declared, That Prelacy, and the Superiority of any Office in the Church above Preſbyters, is, and hath been, a great and inſupportable Grievance to this Nation, and contrary to the Inclinations of the generality of the People ever ſince the Reformation, they having reformed from Popery by Preſbyters, and therefore ought to be Aboliſhed: Our Soveraign Lord and Lady, the King and Queen's Majeſties, with Advice and Conſent of the Eſtates of Parliament, do hereby boliſh Prelacy, and all Superiority of any Office in the Church of this Kingdom above Preſbyters; and hereby reſcinds, Caſſes, and Annuls, the firſt Act of the ſecond Seſſion of the firſt Parliament of King Charles the Second; and the ſecond Act of the third Seſſion of the firſt Parliament of King Charles the Second; and the fourth Act of the third Parliament of King Charles the Second, and all other Acts, Statutes, and Conſtitutions, in ſo far allanerly as they are inconſiſtent with this Act, and do eſtabliſh Prelacy, or the Superiority of Church Officers above Preſbyters. And the King and Queen's Majeſties do declare, that They, with Advice and Conſent of the Eſtates of this Parliament, will ſettle by Law, that Church-Government in this Kingdom which is moſt agreeable to the Inclinations of the People. Claim of right. Acts reſcinded eſtabliſhing prelacy.

No. LIX.

WILLIAM and MARY, Parl. 1, Seſſ. 2, 1690, c. 1. *Act rescinding the Firſt Act of the Second Parliament* 1669.

WM. MARY, 1, c. 1, POLICE, —MARRIAGE.

King's eccleſiaſtical ſupremacy aboliſhed.

OUR Sovereign Lord and Lady, the King and Queen's Majeſties, taking into their Conſideration, that by the ſecond Article of the Grievances preſented to their Majeſties, by the Eſtates of this Kingdom, it is declared, That the firſt Act of the ſecond Parliament of King Charles the Second, entituled, Act aſſerting His Majeſty's Supremacy over all Perſons, and in all Cauſes Eccleſiaſtical, is inconſiſtent with the Eſtabliſhment of the Church-Government now deſired, and ought to be abrogat. Therefore their Majeſties, with Advice and Conſent of the Eſtates of Parliament, do hereby Abrogat, Reſcind, and Annul, the foreſaid Act, and declares the ſame in the whole Heads, Articles, and Clauſes thereof, to be of no force or effect in all time coming.

No. LX.

WILLIAM and MARY, Parl. 1, Seſſ. 2, 1690, c. 2. *Act reſtoring the Preſbyterian Miniſters who were thruſt from their Churches ſince the firſt day of January* 1661.

Narrative as to the outed miniſters.

FORASMUCH as by an Act of this preſent Parliament, relative to, and in proſecution of, the Claim of Right, Prelacy, and the Superiority of Church-Officers above Preſbyters, is aboliſhed; and that many Miniſters of the Preſbyterian Perſuaſion, ſince the firſt of January One thouſand ſix hundred and ſixty-one, have been deprived of their Churches, or baniſhed, for not conforming to Prelacy, and not complying with the courſes of the Time: Therefore their Majeſties, with Advice and Conſent of the Eſtates of Parliament, ordain and appoint, that all theſe Preſbyterian Miniſters, yet alive, who were thruſt from their Charges

ſince the firſt day of January One thouſand ſix hundred ſixty-one, or baniſhed for not conforming to Prelacy, and not complying with the courſes of the Time, have forthwith free Acceſs to their Churches, that they may preſently exerciſe the Miniſtry in theſe Paroches without any new Call thereto; and allows them to bruik and enjoy the Benefices and Stipends thereunto belonging, and that for the whole Cropt One thouſand ſix hundred eighty-nine, and immediately to enter to the Churches and Manſes, where the Churches are vacant; and where they are not vacant, then their entry thereto is declared to be the half of the Benefice and Stipend, due and payable at Michaelmaſs laſt, for the half year immediately preceeding, betwixt Whitſunday and Michaelmaſs; declaring, that the preſent Incumbent ſhall have Right to the other half of the Stipend and Benefice payable for the Whitſunday laſt bypaſt: And to the Effect that theſe Miniſters may meet with no ſtop or hinderance in entering immediately to their Charges, the preſent Incumbents in ſuch Churches are hereby appointed, upon Intimation hereof, to deſiſt from their Miniſtry in theſe Paroches, and to remove themſelves from the Manſes and Gleibs thereunto belonging, betwixt and Whitſunday next to come, that the Preſbyterian Miniſters, formerly put out, may enter peaceably thereto. And appoints the Privy Council to ſee this Act put to Execution.

WM. MARY, I, c 2. POLICE, —RELIGION.

Reſtoration of outed miniſters.

Epiſcopal miniſters of ſuch pariſhes ordered to remove.

No. LXI.

WILLIAM and MARY, Parl. 1, 1690, c. 5. *Act ratifying the Confeſſion of Faith, and ſettling Preſbyterian Church-Government.*

OUR Soveraign Lord and Lady, the King and Queen's Majeſties, and three Eſtates of Parliament, conceiving it to be their bound Duty, after the great Deliverance that God hath lately wrought for this Church and Kingdom; in the firſt place, to ſettle and ſecure therein the true Proteſtant Religion, according to the truth of God's Word, as it hath of a long time been profeſſed within this Land; as

WM. MARY, I, c. 5. POLICE, —RELIGION.

also the Government of Christ's Church within this Nation, agreeable to the Word of God, and most conducive to the advancement of true Piety and Godliness, and the establishing of Peace and Tranquillity within this Realm; and that by an Article of the Claim of Right, it is declared, That Prelacy, and the Superiority of any Office in the Church above Presbyters, is, and hath been, a great and insupportable Grievance and Trouble to this Nation, and contrary to the Inclinations of the generality of the People ever since the Reformation, they having reformed from Popery by Presbyters, and therefore ought to be abolished. Likeas, by an Act of the last Session of this Parliament, Prelacy is abolished; therefore, their Majesties, with Advice and Consent of the saids three Estates, do hereby Revive, Ratifie, and perpetually Confirm, all Laws, Statutes, and Acts of Parliament made against Popery and Papists, and for the maintainance and preservation of the true reformed Protestant Religion, and for the true Church of Christ within this Kingdom, in so far as they confirm the same, or are made in favours thereof. Likeas, they, by these Presents, ratifie and establish the Confession of Faith, now read in their presence, and voted and approven by them as the publick and avowed Confession of this Church, containing the sum and Substance of the Doctrine of the reformed Churches (which Confession of Faith is subjoyned to this present Act.) As also, they do establish, ratifie, and confirm, the Presbyterian Church-Government and Discipline; that is to say, the Government of the Church by Kirk-Sessions, Presbytries, Provincial Synods, and General Assemblies, ratified and established by the 114th Act, James VI, Parl. 12, anno 1592, entituled, Ratification of the Liberty of the true Kirk, &c. and thereafter received by the general consent of this Nation, to be the only Government of Christ's Church within this Kingdom; reviving, renewing, and confirming, the foresaid Act of Parliament, in the whole Heads thereof, except that part of it relating to Patronages, which is hereafter to be taken into consideration, and rescinding, annulling, and making void, the Acts of Parliament following, viz. Act anent Restitution of Bishops, James VI, Parl. 18, Cap. 2; Act ratifying the Acts of the Assembly, 1610,

Narrative.

Claim of right.

Ratification of acts against popery.

Confession of faith.

Presbyterian government and Discipline.

James VI, Parl 21, Cap. 1; Act anent the Election of Archbiſhops and Biſhops, James VI, Parl. 22, Cap. 1; Act entituled, Ratification of the Five Articles of the General Aſſembly, at Perth, James VI, Parl. 23, Cap. 1; Act entituled, For the Reſtitution and Re-eſtabliſhment of the Ancient Government of the Church, by Archbiſhops and Biſhops, Cha. II, Parl. 1, Seſſ. 2, Act 1; Anent the Conſtitution of a National Synod, Cha. II, Parl. 1, Seſſ. 3, Act 5; Act againſt ſuch as refuſe to Depone againſt Delinquents, Cha. II, Parl. 2, Seſſ. 2, Act 2; Act entituled, Act acknowledging and aſſerting the right of Succeſſion to the Imperial Crown of Scotland, Chas II, Parl. 3, Act 2; Act entituled, Act anent Religion and the Teſt, Cha. II, Parl. 3, Act 6. With all other Acts, Laws, Statutes, Ordinances, and Proclamations, and that in ſo far allanery as the ſaids Acts and others generally and particularly above mentioned, are contrary or prejudicial to, inconſiſtent with, or derogatory from, the Proteſtant Religion, and Preſbyterian Government, now eſtabliſhed; and allowing and declaring, that the Church-Government be eſtabliſhed in the hands of, and exerciſed by, theſe Preſbyterian Miniſters, who were outed ſince the firſt of January 1661, for non-conformity to Prelacy, or not complying with the courſes of the times, and are now reſtored by the late Act of Parliament, and ſuch Miniſters and Elders only as they have admitted or received, or ſhall hereafter admit or receive; and alſo, that all the ſaid Preſbyterian Miniſters have, and ſhall have, right to the Maintainance, Rights, and other Priviledges by Law provided, to the Miniſters of Chriſt's Church within this Kingdom, as they are, or ſhall be, legally admitted to particular Churches. Likeas, in purſuance of the Premiſſes, their Majeſties do hereby appoint the firſt Meeting of the General Aſſembly of this Church, as above eſtabliſhed, to be at Edinburgh, the third Thurſday of October next to come, in this inſtant year 1690. And becauſe many conform Miniſters either have deſerted, or were removed from Preaching in their Churches, preceeding the thirteenth day of April 1689, and others were deprived for not giving obedience to the Act of the Eſtates, made in the ſaid thirteenth of April 1689, entituled, Proclamation againſt the owning of

WM. MARY, 1, c. 5. POLICE, —RELIGION.

Statutes reſcinded.

Allowing the church government to be exerciſed by the ſurviving miniſters who were outed.

Firſt meeting of aſſembly.

WM. MARY, I, C. 5. POLICE, —RELIGION.

the late King James, and appointing public Prayers for King William and Queen Mary, therefore, their Majeſties, with advice and conſent foreſaid, do hereby declare all the Churches, either deſerted, or from which the conform Miniſters were removed or deprived, as ſaid is, to be Vacant; and that the Preſbyterian Miniſters exerciſing their Miniſtry within any of theſe Paroches (or where the laſt Incumbent is dead) by the deſire or conſent of the Paroch, ſhall continue their poſſeſſion, and have right to the Benefices and Stipends, according to their entry in the year 1689; and in time coming, ay and while the Church, as now eſtabliſhed, take further courſe therewith. And to the effect the Diſorders that have happened in this Church may be redreſſed, their Majeſties, with advice and conſent foreſaid, do hereby allow the General Meeting, and Repreſentatives of the foreſaid Preſbyterian Miniſters and Elders, in whoſe hands the Exerciſe of the Church-Government is eſtabliſhed, either by themſelves, or by ſuch Miniſters and Elders as ſhall be appointed and authorized Viſitors by them, according to the Cuſtom and Practice of Preſbyterian Government throughout the whole Kingdom, and ſeveral parts thereof, to try and purge out all inſufficient, negligent, ſcandalous, and erroneous Miniſters, by due courſe of Eccleſiaſtical Proceſs and Cenſures, and likeways for redreſſing all other Church diſorders. And, further, it is hereby provided, that whatſoever Miniſter, being conveened before the ſaid General Meeting, and Repreſentatives of the Preſbyterian Miniſters and Elders, or the Viſitors to be appointed by them, ſhall either prove contumacious in not appearing, or be found guilty, and ſhall be therefore cenſured, whether by Suſpenſion or Depoſition, they ſhall *ipſo facto* be ſuſpended from, or deprived of, their Stipends and Benefices.

What churches are declared vacant.

No. LXII.

WILLIAM and MARY, Parl. 1, 1690, c. 27. *Act reſcinding the Laws for Conformity.*

OUR Soveraign Lord and Lady, the King and Queen's Majeſties, and three Eſtates of Parliament, conſidering how neceſſary it is for the well and Peace of this Kingdom, and of Chriſt's Church within the ſame, as now by law eſtabliſhed, that the Acts following be reſcinded; do therefore reſcind, caſs, annul, and make void, the Act Cha. II, Parl. 1, Seſſ. 2, Cap. 4, concerning Maſters of Univerſities, Miniſters, &c.; Act 5, *ibidem*, concerning the Declaration to be ſigned by all Perſons in public Truſt; Act Cha. II, Parl. 1, Seſſ. 3, Cap. 2, againſt Separation and Diſobedience to Eccleſiaſtick Authority, Act, Cap. 3, *ibidem*; additional Act concerning the Declaration, Act, Cha. II, Parl. 2, Seſſ. 2, Cap. 5, againſt Conventicles; Act, Cap. 6, *ibidem*, againſt diſorderly Baptiſms; Act, Cap. 7, *ibidem*, againſt Separation and withdrawing from the Public Meetings of Divine Worſhip; Act, Cha. II, Parl. 2, Seſſ. 3, Cap. 9, againſt unlawful Ordinances; Act, Cha. II, Parl. 2, Seſſ. 3, Cap. 17, againſt Keepers of Conventicles, and Withdrawers from Public Worſhip; Act, Cha. II, Parl. 3, Cap. 4, for Securing of the Peace of the Countrey; Act, James VII, Parl. 1, Seſſ. 1, Cap. 6, obliging Huſbands to be lyable for their Wives Fines, Act, Cap. 8, *ibidem*; againſt Preachers at Conventicles, and Hearers at Field-Conventicles; Act, Cap. 24, *ibidem*, ordaining that Tennents be obliged by their Tacks to live regularly; and generally all other Acts, Clauſes, and Proviſions, in Acts whatſoever, made ſince the year 1661, incluſive, againſt Non-conformity, or for Conformity to the Church and Government thereof, as then eſtabliſhed under Archbiſhops and Biſhops.

WM. MARY, 1, c. 27, POLICE, —RELIGION.

Conformity acts reſcinded.

No. LXIII.

WILLIAM III, Parl. 1, 1695, c. 12. *Act againſt Irregular Baptiſms and Marriages.*

WILL. III, 1, c. 12, POLICE, —MARRIAGE.

OUR Soveraign Lord conſidering, That the Baptizing of Children, and ſolemnizing of Marriage, by the Laws and Cuſtom of this Kingdom, and by the Conſtitutions of this Church, have alwiſe been done by Miniſters of the Goſpel, authorized by Law and the eſtabliſhed Church of this Nation; and that, notwithſtanding thereof, ſeveral Miniſters, now out of their Churches, do preſume to Baptize Children, and ſolemnize Marriage, without Proclamation of Banns, or conſent of Parents, and ſometimes within the forbidden Degrees: therefore his Majeſty, with advice and conſent of the Eſtates of Parliament, ſtrictly prohibits and diſcharges all outed Miniſters to Baptize any Children, or ſolemnize Marriage betwixt any Parties in all time coming, under the pain of Impriſonment, ay and while he find Caution to go out of the Kingdom, and never to return thereto; and remits the execution of this Act to the Miniſters of the Law, who are to aſſiſt to the execution of the Twenty-third Act of the fourth Seſſion of this Parliament, for ſettling the Quiet and Peace of the Church: declaring alwiſe, that this preſent Act is without prejudice to the Acts of Parliament already made againſt Privat and Clandeſtine Marriages, which are hereby declared to ſtand in full force, and that execution may proceed on the ſaids Acts at the inſtance of the Parties concerned, or of the Procurator-fiſcals of the Juriſdictions where they ſhall happen to be queſtioned.

Outed miniſter prohibited to marry.

No. LXIV.

WILLIAM, Parl. 1, 1698, c. 6. *Act againſt Clandeſtine and Irregular Marriages.*

OUR Soveraign Lord, with advice and conſent of the Eſtates of Parliament, for rendering more effectual the Acts of Parliament againſt Clandeſtine and Irregular Marriages, viz. the Thirty-fourth Act of the firſt Parliament 1661, and Twelfth Act of the fifth Seſſion of this current Parliament, ſtatutes and ordains, That the Parties clandeſtinely or irregularly Married, contrary to the ſaid Act 1661, declare, when required, the Names and Deſignations of the Miniſter, or Perſon, who celebrate the ſaid Clandeſtine or Irregular Marriages, and of ſuch as were Witneſſes to the ſaid Marriages, with Certification, that if they refuſe, when required, the foreſaid Parties married ſhall pay, each Nobleman, two thouſand Pounds; each Baron and Landed Gentleman, two thouſand Merks; each Gentleman and Burges, one thouſand Pound; each other Perſon, two hundred Merks; to be applyed to pious Uſes within the Pariſhes where the ſaid Perſons dwell; and, farther, be impriſoned ay and while they do declare who were Celebrators of, and Witneſſes, to the ſaid Marriages; and alſo make payment of the reſpective Penalties above mentioned. And for the better repreſſing of the ſaid Clandeſtine Marriages, it is further ſtatute and ordained, that, over and above the Pains contained in the ſaid Act 1661 and 1695, againſt Clandeſtine and Irregular Marriages, the Celebrator of the ſaid Clandeſtine Marriage ſhall be lyable to be ſummarily ſeized and impriſoned by any ordinar Magiſtrat or Juſtice of Peace; and further puniſhable by the Lords of his Majeſty's Privy Council, not only by perpetual Baniſhment, but by ſuch pecunial or corporal Pains, as the ſaids Lords of Privy Council ſhall think fit to inflict; as alſo, that the Witneſſes to the ſaid Clandeſtine Marriages ſhall be lyable, each of them in the Sum of one hundred

WM. III, 1, c. 6.

Parties how puniſhed.

Penalty.

Celebrator.

Puniſhment of.

WM. III, 1, c. 6. Pounds Scots, *toties quoties*, to be applyed to the Uſes, and in manner above mentioned, or if Inſolvent, to ſuch Corporal Puniſhment as the ſaids Lords ſhall think fit to determine.

No. LXV.

Geo. III. 43, c. 151, *An Act for preventing and ſettling Diſputes which may ariſe between Maſters and Weavers engaged in the Cotton Manufacture in Scotland, and Perſons employed by ſuch Weavers and Perſons engaged in ornamenting Cotton Goods by the Needle.*

Diſputes between maſters and weavers to be ſettled by referees.

WHEREAS, &c. That, from and after the paſſing of this Act, in all Caſes relative to the weaving of the ſaid Manufacture that ſhall and may ariſe within that Part of Great Britain called Scotland, where the Maſters and Weavers, or the Weavers and thoſe employed by them cannot agree reſpecting the Price or Prices to be paid for Work done or in the Courſe of being done in the ſaid Manufacture, whether ſuch Diſpute ſhall happen or ariſe between them reſpecting the Reduction or Advance of Wages, or any Injury or Damage done or alleged to have been done to the Work, or reſpecting any Delay or ſuppoſed Delay in finiſhing the Work, or the not finiſhing ſuch Work in a good and workmanlike Manner; and alſo in all Caſes where the Weavers are to be employed to work any new Pattern which ſhall require them to purchaſe any new Implements of Manufacture, or to make any Alteration upon the old Implements for the working thereof; and the Maſters and Weavers cannot agree upon the Compenſation to be made to ſuch Weavers for or in Reſpect thereof; and alſo reſpecting the Length, Breadth, or Quality of all Pieces of Cotton Goods, whether mixed or unmixed with other Materials, or the Yarn thereof, or the Quantity and Quality of the Woof thereof, and in all Caſes of Diſpute or Difference whatſoever, ariſing or happening by and between the Maſters and Weavers, or Perſons employed in ſuch Branch of the ſaid Manufacture, out of, for, or touching ſuch Trade or Manufacture, ſo far as ſuch Diſputes relate to ſuch Branch of the

What diſputes are ſo to be ſettled.

ſame which cannot be otherwiſe mutually adjuſted and ſettled by and between them, it ſhall and may be lawful for any Juſtice of the Peace of the County, Stewartry, City, Burgh, or Place in which the Diſpute ſhall ariſe, and he is hereby required, on Complaint made before him, and Proof by the Examination of the Party making ſuch Complaint, that Application has been made to the Perſon or Perſons againſt whom ſuch Cauſe of Complaint has ariſen, or his, her, or their Agent or Agents, if ſuch Diſpute has ariſen with ſuch Agent or Agents to ſettle ſuch Diſpute, and that the ſame has not been ſettled upon ſuch Complaint being made; or where the Diſpute relates to a bad Warp, that ſuch Cauſe of Complaint has not been done away within forty-eight Hours after ſuch Application, to ſummon before him ſuch Perſon or Perſons, or Agent or Agents, on ſome Day not exceeding Two Days, excluſive of Sunday, from the making ſuch Complaint, giving Notice to the Perſon making ſuch Complaint of the Time and Place appointed in ſuch Summons for the Attendance of ſuch Perſon or Perſons, Agent or Agents, as aforeſaid; and if at ſuch Time and Place the Perſon or Perſons ſo ſummoned ſhall not appear by himſelf, or ſend ſome Perſon on his, her, or their Behalf, to ſettle ſuch Diſpute, or appearing ſhall not do away ſuch Cauſe of Complaint, then and in ſuch Caſe it ſhall be lawful for ſuch Juſtice, and he is hereby required, at the Requeſt of either of the ſaid Parties, to nominate Referees for the ſettling the Matters in Diſpute, and ſuch Juſtice ſhall then and there at ſuch Meeting propoſe One Referee on the Part and Behalf of the Maſter or Agent aforeſaid, who ſhall be a Maſter Manufacturer, or Agent or Foreman of ſome Maſter Manufacturer; and where ſuch Maſter Manufacturer, Agent, or Foreman cannot be found, it ſhall be lawful for ſuch Juſtice to propoſe ſome Workman, having a competent Knowledge of the Manufacture on the Part of the ſaid Maſter or Agent; and the ſaid Juſtice ſhall then and there propoſe another Referee on the Part and Behalf of the Workman, who ſhall be ſome Workman having a competent Knowledge of that Branch of the Manufacture with regard to which ſuch Diſpute ſhall have ariſen (ſuch reſpective Referees reſiding in or near to the Place where the Meeting for ſuch Referee ſhall be to be held), and it ſhall be lawful for any ſuch Manu-

GEO. III, 43, c. 154, —COTTON WEAVERS.

One juſtice

Summoning the party.

Nomination of referees.

GEO. III, 43, c. 151. —COTTON WEAVERS.

facturer, Agent, or Foreman, or ſuch Workman, or any Perſon attending for them reſpectively, peremptorily, and without aſſigning any Reaſon, to challenge any Referee ſo propoſed; and the Juſtice ſhall in ſuch Caſe immediately propoſe another Perſon of the like Deſcription as aforeſaid, who may alſo be peremptorily challenged, and if ſo challenged, the Juſtice ſhall in ſuch Caſe propoſe another ſuch Perſon of the like Deſcription as aforeſaid, who may alſo be peremptorily challenged, ſo as that each Party may have Two peremptory Challenges without aſſigning any Cauſe; but if the Perſons ſo propoſed as Referees ſhall not be ſo challenged, or if either of ſuch Parties ſhall not attend at any ſuch Meeting to make any ſuch Challenge, the Perſons ſo propoſed, or in the Event of all the Challenges hereby allowed being made, the Perſons thereupon propoſed by the ſaid Juſtice ſhall be nominated Referees to ſettle ſuch Diſpute, and the ſaid Juſtice ſhall thereupon appoint a Place of Meeting according to the Directions of this Act, and alſo a Day for the Meeting, Notice of which Nomination, and of the Time of Meeting ſhall thereupon be given to the Perſons ſo nominated Referees, and to any Party to any ſuch Diſpute who may not have attended the Meeting before ſuch Juſtice as aforeſaid, which Appointment ſhall be by ſuch Juſtice certified in the Form following; that is to ſay,

Challenge.

'I *A. B.* one of the Juſtices of Peace acting for
'do hereby certify, That *C. D.* and *E. F.* are by me duly
'nominated Referees to ſettle the Matters in Difference
'between *G. H.* of Maſter Manufacturer,
'or Agent, or Foreman of, *(as the Caſe may be)* and *I. K.*
'of , Weaver, purſuant to an Act paſſed in
'the Forty-third Year of the Reign of His preſent Majeſty;
'and that the ſaid Referees are hereby directed to meet at
' on the Day of
'at of the Clock.

'A. B.'

Periods within which complaint ſhall be made.

2. PROVIDED alſo, That all Complaints by any Weaver as to bad Materials, ſhall be made within Four Weeks of his receiving the ſame; and all Complaints ariſing from any other Cauſe ſhall be made within three Days after ſuch Cauſe of Complaint ſhall ariſe, and that it ſhall not be allowable to any Manufacturer who ſhall have received into

his Poſſeſſion any Cotton Cloth without Objection made by himſelf or his Clerk or Foreman, afterwards to make any Complaint on Account of Work ſo received. GEO. III, 43, c. 151. —COTTON WEAVERS.

3, PROVIDED always, That in all Caſes where Complaints are made reſpecting bad Warps or Utenſils by Workmen, the Place of Meeting of the Referees ſhall be at, or as near as may be to, the Place where the Work has been given out. Places of meeting of referees.

4, PROVIDED alſo, That if any Perſon ſo complaining as aforeſaid, ſhall not attend or ſend ſome Perſon on his or her Behalf at the Time and Place appointed by ſuch Juſtice of the Peace for the Purpoſe of naming Referees as aforeſaid, ſuch Perſon ſhall not, in ſuch Caſe, be entitled to the Benefit of this Act; and if any Perſon againſt whom any ſuch Complaint ſhall have been made as aforeſaid, ſhall not attend, or ſend ſome Perſon on his or her Behalf, the Juſtice of the Peace ſhall nevertheleſs proceed to nominate Referees, and the Perſon making ſuch Default ſhall in that Caſe be deprived of all Right of Challenge under this Act. Party complaining not attending to loſe the benefit of this act, and party complained of not attending to loſe his right of challenge.

5, THAT the ſaid Referees ſhall meet at the Time and Place fixed by the Juſtice of the Peace by whom ſuch Referees were appointed, and ſhall, by Inſpection of the Work in regard to which the Diſpute may have ariſen, by hearing and examining the Parties, or any other Perſons on their Behalf, or that attend to give Evidence reſpecting the Matters in Diſpute, or by otherwiſe aſcertaining the true State of the Caſe, in ſuch Manner as to ſuch Referees ſhall appear neceſſary, proceed to determine the Matter or Matters in Diſpute referred to them, and the Award to be made by ſuch Referees ſhall be final and concluſive between the Parties, without being ſubject to review or challenge by any Court whatſoever; but in Caſe ſuch Referees, ſo appointed, cannot agree upon and decide ſuch Matter or Matters in Diſpute ſo referred as aforeſaid, or ſhall not make and ſign their Award within Three Days after the Date of the Order of ſuch Juſtice, certifying their Appointment, and then the ſaid Referees ſhall without Delay go before the Juſtice by whom they were appointed, and, in Caſe of his Abſence or Indiſpoſition, before any other of His Majeſty's Juſtices of the Peace acting in and for the County, Stewartry, City, Burgh, or Place, and reſiding neareſt to the Place where the Meeting to ſettle ſuch Diſpute ſhall have taken Place, and ſhall ſtate to ſuch Juſtice or Juſtices who may be pre- Referees to determine. If no award within three days.

GEO. III, 43. c. 151. —COTTON WEAVERS.

ſent, the Points in Difference between them the ſaid Referees, which Points in Difference the ſaid Juſtice or Juſtices ſhall and is and are hereby authorized and required to hear and determine upon the Statement of the Referees, and the ſaid Juſtice or Juſtices is and are hereby directed and required to ſettle and determine the Matter in Diſpute with all poſſible Diſpatch, and in all Caſes, within the Space of Two Days after the Expiration of the Time hereby allowed to the Referees to make and ſign their Award; and the Determination of ſuch Juſtice or Juſtices ſhall be final and concluſive between the Parties ſo differing as aforeſaid, without being ſubject to review by any Court whatſoever.

Juſtice to determine upon ſtatement of one referee.

6, PROVIDED always, That if either of the ſaid Referees ſhall refuſe or delay to go before the ſaid Juſtice or Juſtices, ſuch Juſtice or Juſtices are hereby empowered and required to determine the Matter in Diſpute upon the Statement and Repreſentation of the Referee who ſhall come before him or them.

Empowering the Juſtices on refuſal of referees to act, to name others.

7, PROVIDED always, That in Caſe either or both of the ſaid Referees ſo appointed ſhall refuſe or delay to accept ſuch Reference, or accepting, ſhall not act therein, the Juſtice ſhall proceed to name another Perſon or other Perſons of the Deſcriptions aforeſaid, to be Referee or Referees in Place of ſuch Referee or Referees ſo refuſing or delaying to accept, or who ſhall not act; and the Party or Parties ſhall have the ſame Power of Challenge in the Caſe of a ſecond Nomination, as is given by this Act in the Caſe of a firſt Nomination: Provided always, That ſuch Party has not already exerciſed the ſame; and in every Caſe of a ſecond Nomination, the Referees ſhall meet within Twenty-four Hours after the Application for the ſame, and at the ſame Place at which the Meeting of the Referees firſt named was appointed; and the Expence of every ſuch Application for the Appointment of a ſecond Referee ſhall be borne and defrayed by the Party through whoſe Default, or the Default of whoſe Referee ſuch Application is rendered neceſſary.

Where a ſecond referee appointed, and he does not attend, the other referee may determine.

8, THAT in every Caſe where a ſecond Referee ſhall be appointed as aforeſaid, and ſuch ſecond Referee ſhall not attend at the Time and Place appointed for ſettling the Matters in Diſpute, it ſhall be lawful for the other Referee, at ſuch Time and Place, to proceed by himſelf to the hear-

ing and determining of the ſaid Matters in Diſpute; and in ſuch Caſe the Award of ſuch ſole Referee ſhall be final and concluſive as to all Matters in Diſpute ſubmitted to ſuch Referees without being ſubject to Review, Appeal, or Suſpenſion. GEO. III, 43, c. 151. —COTTON WEAVERS.

9, THAT all Perſons ſummoned as Witneſſes on any Queſtion under this Act, by any Juſtice or Juſtices of the Peace, ſhall be liable and ſubject to ſuch Puniſhment or Penalties for any Neglect, Default, or Refuſal to attend, as may be inflicted or levied by any Law in force in Scotland, for ſuch Offence, Neglect, or Default. Puniſhing witneſſes not attending.

10, THAT if either of the ſaid Parties ſhall neglect or refuſe to attend the ſaid Referees or Referee, they or he may, notwithſtanding, proceed to make their or his Award in the ſame Manner as if ſuch Party had attended. Arbitration to proceed though parties do not attend.

11, PROVIDED always, That if the Parties by and between whom the ſaid Reference ſhall take place as aforeſaid ſhall think it expedient or be deſirous to extend the Time hereby limited, for the making of the Award or Umpirage, it ſhall and may be lawful for them to extend the ſame accordingly by Indorſement (according to the Form in the Schedule hereunto annexed), on the Back of the Order of the Juſtice of Peace, certifying the Appointment of the Referees, to be ſigned by both of them in the Preſence of One or more credible Witneſs or Witneſſes, any Thing herein before contained to the contrary notwithſtanding. Parties may extend the period limited for award.

12, PROVIDED alſo, That the Award or Umpirage to be made upon any Reference demanded under this Act, ſhall and may be drawn up and written at the Foot or upon the Back of the ſaid Order, certifying the Appointment of the Referees, according to the Form in the Schedule hereunto annexed, any Law, Uſage, or Cuſtom to the contrary notwithſtanding. How award ſhall be written.

13, THAT upon Fulfilment of the Award or Umpirage, the ſame ſhall be acknowledged by the Party in whoſe Behalf the ſame was made, by an Acknowledgment at the Foot of the ſaid Award in the Form of the Schedule hereunto annexed, which with the Award ſhall thereupon be delivered to the Party fulfilling the ſame, and if either Party ſhall refuſe or delay to fulfil the ſaid Award or Umpirage, for the Space or Term of Two Days after the ſame ſhall have been reduced into Writing, the Party ſo refuſing or delaying ſhall Penalty on perſons refuſing to fulfil an award.

GEO. III, 34, c. 151. —COTTON WEAVERS.

forfeit and pay to the Party in whoſe Favour the ſaid Award or Umpirage ſhall be made, the Sum of Ten Pounds, to be recovered in a ſummary Way before One or more Juſtice or Juſtices of the Peace for the County, Stewartry, City, Burgh, or Place, where ſuch Offence ſhall be committed; and the Conviction for the ſame, according to the Form of the Schedule hereunto annexed, may be had and made upon the Production of the Award or Umpirage undiſcharged; and in Caſe any ſuch Forfeiture or Penalty ſhall not be forthwith paid purſuant to ſuch Conviction, ſuch Juſtice or Juſtices ſhall, by Warrant under his or their Hand or Hands, cauſe the ſame to be levied by Diſtreſs and Sale of the Offender's Goods and Effects, together with all Coſts and Charges attending ſuch Diſtreſs or Sale; and in Caſe no ſufficient Diſtreſs can be had, ſuch Juſtice or Juſtices ſhall, by Warrant under his or their Hand or Hands, commit the Offender to the common Gaol or ſome Houſe of Correction, within his or their Juriſdiction, there to remain without Bail for any Time not exceeding three Calendar Months, nor leſs than Two Calendar Months.

Like proceedings againſt agents, ſervants, and partner.

14, PROVIDED always, That where any Work ſhall have been delivered to any Workman by the Agent or Servant of any Maſter or Maſters to be when finiſhed delivered to ſuch Agent or Servant, and alſo where Two or more Perſons ſhall carry on the Buſineſs of ſuch Manufacture as Partners, in every ſuch Caſe reſpectively the like Proceedings directed by this Act ſhall and may be had againſt ſuch Agent, Servant, or any Partner, and ſhall be as effectual as if the ſame had been had and made againſt the Principal or againſt all the Partners, and all the ſaid Perſons reſpectively ſhall obey the Award made thereupon, and all ſuch Order or Orders as ſhall be made by the ſaid Juſtice or Juſtices in or reſpecting the Matters in Diſpute, and ſhall be ſubject to the ſame Pains, Penalties, and Forfeitures for refuſing or delaying to abide by or perform the ſaid Order, as if the Proceedings had been had againſt the Principal or all the Partners.

Proceedings in caſes of bankruptcy of maſter.

15, PROVIDED alſo, That in all Caſes where any Proceeding may be had againſt any Maſter or Maſters under this Act, or where ſuch Proceedings ſhall have been commenced, and the Maſter or Maſters ſhall become or be Bankrupt, or any Aſſignment of his or their Eſtate or Effects ſhall have

been made under the ſaid Bankruptcy, or otherwiſe by Deed or in Law, the Factor or Truſtee upon or the Aſſignee or Aſſignees of ſuch Eſtate or Effects ſhall be liable to the Proceedings authoriſed by this Act againſt the Maſter or Maſters as fully as the Maſter or Maſters was or were before the Bankruptcy or Aſſignment; and ſuch Proceedings may be commenced or carried on againſt ſuch Factor or Truſtee, or Aſſignee or Aſſignees, who ſhall fulfil and abide by the Award made thereupon, and all ſuch Order or Orders as ſhall be made by the ſaid Juſtice or Juſtices in or reſpecting the Matters in Diſpute, and ſhall be ſubject to the ſame Pains, Penalties, and Forfeitures for refuſing or delaying to abide by or perform the ſame as if the Proceeding had been had againſt the Maſter or Maſters before his or their Bankruptcy or the Aſſignment of his or their Eſtate or Effects: Provided that all Sums of Money to be paid in purſuance of ſuch Award or Orders ſhall be recoverable only out of the Eſtate or Effects of ſuch Maſter or Maſters, and not out of the proper Money of ſuch Factor or Truſtee or Aſſignee or Aſſignees. GEO. III, 43, c. 151. —COTTON WEAVERS.

16, THAT where any married Woman or Infant under the Age of Twenty-one Years ſhall have cauſe of Complaint in any of the Caſes provided for by this Act againſt any Maſter or Maſters, his or their Agent, or Servant, or Factor, or Truſtee, or Aſſignee or Aſſignees as aforeſaid, ſuch Complaint may be lodged, and all further Proceedings thereupon had by and in the Name of the Huſband of ſuch married Woman, and of the Father, or, if Dead, of the Mother, or if on the Death of both Parents, of any of the Kindred of any ſuch Infant, and of the Surety or Sureties in any Indenture of Apprenticeſhip of any ſuch Infant being an Apprentice, and ſuch Proceedings ſhall be as effectual and as valid and binding as if ſuch married Woman was ſole, and ſuch Infants were of full Age, and purſued by themſelves, the Remedies preſcribed by this Act. For ſettling complaints by married women or infants.

17, THAT all Coſts, Time, and Expences attending the Applications to Juſtices to be made under this Act, and of the Reference purſuant thereon, ſhall be ſettled by the Referees or Referee by whom ſuch Diſpute ſhall be ſettled, and where the ſame ſhall be determined by any Juſtice or Juſtices of the Peace upon the Statement of the Referees or Referee in Manner herein directed, then the Coſts, Time, Payment of coſts, &c.

GEO. III, 43, c. 151. —COTTON WEAVERS.

and Expences aforeſaid ſhall be ſettled by ſuch Juſtice or Juſtices; and where the Referees appointed as aforeſaid cannot agree as to the Coſts, Time, and Expences to be allowed, the ſame ſhall be ſettled by the Juſtice of the Peace by whom the ſaid Referees or Referee were or was named, or in his Abſence by any other Juſtice or Juſtices of the Peace for the ſame County or Stewartry.

18, THAT the following and no higher Fees ſhall be allowed to be taken for any Proceeding under this Act:

To the Clerk of the Juſtice or Juſtices,
For each Summons, Four-pence;
For every Oath or Affirmation, Four-pence;
For drawing and entering the Order, Sixpence;
For every Warrant, Sixpence;
For every Conviction, One Shilling.

To the Conſtable or other Peace Officer,
For Service of Summons or Order, Four-pence;
For executing Warrant of Diſtreſs and Sale of Goods, One Shilling and Sixpence;
For Cuſtody of Goods diſtrained, *per diem*, Four-pence;
For every Mile he ſhall travel, Four-pence; and a Table of Fees ſigned by the Clerk to ſuch Juſtice or Juſtices ſhall be hung up in every Place where any General, Quarter, or other Seſſions of the Peace ſhall be held.

Standard ell to be the rule.

19, THAT in all Caſes the Length of the Web for which the Workman is to be paid, ſhall be aſcertained by the Standard Ell of Forty-five Inches.

Ticket to be given out with the work.

20, THAT with every Warp given out by the Manufacturer to a Workman to be wove, there ſhall be delivered a Ticket, denoting the Work to be done adapted to each Branch of the Manufacture, ſtating the Quantity and Fineneſs of the Warp in plain Warps, whether white or coloured, and in all Caſes the Quantity and Denomination of the Work to be performed, and the Rate and Price to be paid for the ſame, according to the Standard Ell, if done in a workmanlike Manner, which Ticket ſhall be ſigned by the Manufacturer or the Perſon employed by him to give out Work; and which Ticket, in the Event of Diſputes between the Maſter and Weaver, ſhall be Evidence of all Matters and Things mentioned therein, or reſpecting the ſame.

21, THAT every Maſter, Foreman, or Agent refuſing or neglecting to give a Ticket in the Manner hereby preſcribed, ſhall forfeit and pay any Sum not exceeding Ten Shillings, nor leſs than Five Shillings, for each Failure or Neglect to any Perſon or Perſons who ſhall ſue for the ſame, to be recovered and applied in the ſame Manner as other Penalties may be recovered and applied by this Act: Provided always, That no Appeal ſhall be competent againſt any Conviction for any ſuch Penalty. GEO. III, 43, c. 151. —COTTON WEAVERS. Penalty in caſe ticket not given out with work.

22, PROVIDED always, That in all Caſes reſpecting mounting or getting up new Patterns, the Sum, if any, that ſhall be agreed between the Maſter and Workman to be paid, or the Manner in which the Workman is to be compenſated for Mounting, ſhall be diſtinguiſhed in every ſuch Ticket from the Price to be paid for Working. New patterns to be diſtinguiſhed in the ticket.

23, PROVIDED always, That in all Caſes of Diſpute that may ariſe between Weavers and Perſons employed by them, or which may ariſe between Maſters and Perſons engaged in ornamenting Cotton Goods with the Needle, it ſhall and may be lawful for any One of His Majeſty's Juſtices of the Peace, acting in and for the County, Stewartry, City, Burgh, or Place, where ſuch Diſpute ſhall happen, and he is hereby required, upon Complaint being made to him in the Manner directed by this Act, to appoint Two Perſons, being either Manufacturers, or the Foremen or Agents of Manufacturers, or other Perſons who have a competent Knowledge of that Branch of the Manufacture about which ſuch Diſpute may have ariſen, which Perſons ſo appointed ſhall examine into and inſpect the Work or Materials in regard to which ſuch Diſpute ſhall have ariſen, and ſhall otherwiſe proceed to determine the ſaid Matter or Matters in Diſpute, in the Manner directed by this Act; and all the Proceedings, Rules, Directions, Matters, and Things ſhall take Place, and be followed and obſerved in and for the Settlement of ſuch Diſputes, as by this Act are provided in theſe Caſes of Diſpute where Referees are directed to be appointed by this Act. Settling diſputes reſpecting ornamenting cotton goods with the needle.

24, PROVIDED always, That every Award or Umpirage, Ticket, Matter, or Thing, under and by virtue of this Act, ſhall and may be drawn up and written upon unſtamped Paper, any Law, Cuſtom, or Uſage to the contrary thereof in anywiſe notwithſtanding. Award to be on unſtamped paper.

GEO. III, 43, c. 151. —COTTON WEAVERS.

25, THAT it ſhall and may be lawful for any Perſon convicted before any One or more Juſtice or Juſtices of the Peace of any Offence againſt this Act, to appeal to the Juſtices of the Peace aſſembled at the next General Quarter Seſſions or Adjourned Quarter Seſſions of the Peace, to be holden for the County, Stewartry, City, Burgh, or Place, wherein ſuch Conviction ſhall be made, ſuch Perſon ſo appealing giving immediate Notice of ſuch Appeal, and finding ſufficient Sureties in the Sum of Five Pounds each, and entering into his or her own Recognizance before ſuch Juſtice or Juſtices before whom he ſhall be ſo convicted as aforeſaid, in the Sum of Ten Pounds, to appear and proſecute every Appeal with Effect; and the Juſtices of the Peace at ſuch General Quarter or Adjourned Seſſions of the Peace are hereby authorized and required, on every ſuch Appeal being made, and on reaſonable Notice thereof given to the other Party, finally to hear and determine the Matter of every ſuch Appeal, and to make ſuch Order, and award ſuch Coſts therein, as they in their Diſcretion ſhall ſee meet; and which ſaid Order and Determination ſhall be final and concluſive to all Parties; and no Bill of Advocation or Suſpenſion ſhall be competent againſt any ſuch Proceedings or Determination.

Appeal.

Limitation of action.

26, THAT no Action or Complaint ſhall be brought againſt any Referee, Juſtice of the Peace, Conſtable, or other Officer, or againſt any other Perſon or Perſons whomſoever, for any Matter or Thing whatſoever done or committed under or by virtue, or in the Execution of this Act, unleſs ſuch Action or Complaint ſhall be brought within Six Calendar Months next after the doing or committing of ſuch Matter or Thing.

Act may be given in evidence.

27, PROVIDED always, That if any Action or Suit ſhall hereafter be commenced or proſecuted againſt any Perſon or Perſons, for any Thing done under or by virtue, or in the Execution of this Act, ſuch Perſon or Perſons denying the Libel, or objecting to the Relevancy, may give this Act and ſpecial Matter in Evidence; and if the Action ſhall be diſmiſſed for Want of Proſecution, or the Defender or Defenders ſhall be aſſoilzied, ſuch Defender or Defenders ſhall recover his, her, or their full Coſts, for which he, ſhe, or they ſhall have like Remedy as in Caſes where Coſts by Law are given to Defenders.

28, PROVIDED alſo, That no Juſtice of the Peace, being alſo a Maſter Cotton Weaver, ſhall act as ſuch Juſtice under this Act, any Thing herein contained, or any former Statute, Law, Uſage, or Cuſtom to the contrary thereof in anywiſe notwithſtanding. GEO. III, 43, c. 151.—COTTON WEAVERS. No maſter to act as a Juſtice of Peace under this Act.

29, PROVIDED alſo, That no Proceeding under this Act ſhall be ſet aſide or quaſhed for Want of Form. Proceedings not to be quaſhed.

30, PROVIDED alſo, That nothing in this Act contained ſhall extend, or be conſtrued to extend, to repeal, abridge, annul, or make void any of the Clauſes, Proviſions, Remedies, or Powers contained in the ſeveral Acts made and paſſed in the Firſt Year of the Reign of her late Majeſty Queen Anne, and in the Thirteenth and Twenty-third Years of the Reign of his late Majeſty King George the Second, and the Seventeenth Year of the Reign of his preſent Majeſty, or in any or either of them; or in any other Act or Acts relating to the Powers of Juſtices of the Peace, unleſs in ſo far as altered by this Act, or to the ſaid Trade heretofore made and paſſed, ſo far as the ſame enact, provide, or inflict any Pains, Penalties, and Puniſhments upon, or againſt ſuch Workmen, and ſo far as the ſame enact, provide, or afford any Remedy or Remedies to the Maſters againſt the Workmen engaged in the ſaid Trade or Manufacture, (ſave and except where Referees have been appointed in the Manner directed by this Act), any Thing in this Act contained to the contrary thereof in anywiſe notwithſtanding. No repeal of former acts beyond a certain extent.

31, THAT this Act ſhall be taken and allowed to be a public Act in all Courts within this Kingdom; and all Judges and Juſtices of the Peace are hereby required to take Notice thereof as ſuch without ſpecially pleading the ſame. Public act.

FORM *of the* AWARD *to be written at the Foot or upon the Back of the Order of the Juſtices of Peace, certifying the Reference.*

WE *I. K.* and *L. M.* *(name and deſcribe the Referees)* the Referees appointed to ſettle the Matters in Diſpute between the Parties within named, (*I. K.* one of the Referees ſo appointed, *or L. M.* the other Referee appointed, having failed

GEO. III, 43, c. 151. —COTTON WEAVERS.

to attend, *or* I *N. O.* the Juſtice, *as the Caſe may be*) do hereby adjudge and determine, that (*here ſet forth the Determination to which the Referees or Referee or Juſtice, as the Caſe may be, ſhall ſubſcribe their Names.*)

FORM *of* INDORSEMENT *extending the Time limited for making the Award.*

WE *A. B.* and *C. D.* Parties to the within Reference, do hereby agree to extend the ſame to the Day of inclusive. Witneſs our Hands this Day

Witneſs A. B.
C. D.

FORM *of* ACKNOWLEDGMENT *of Fulfilment of the* AWARD *to be written at the Foot thereof.*

I *A. B.* do hereby acknowledge that the above Award has been fulfilled by *C. D.* who is hereby diſcharged of the ſame. Witneſs my Hand this Day of

Witneſs A. B.

FORM *of* CONVICTION *for refuſing or delaying to fulfil the* AWARD.

BE it remembered, That on the Day of in the Year of His Majeſty's Reign, and in the Year of our Lord *A. B.* is convicted before me (*or name the Juſtices of the Peace for the County, Stewartry, City, Burgh, or Place of*) that the ſaid *A. B.* has refuſed or delayed to ſubmit to the Award within the Time limited, contrary to the Statute made in the Year of his preſent Majeſty, intituled, *An Act* (*here ſet forth the Title of the Act*) and I (*or* we) the ſaid Juſtice (*or* Juſtices) do hereby adjudge and determine the ſaid *A. B.* for the ſaid Offence to forfeit and loſe the Sum of of lawful Money of Great Britain, and do order the ſame to be forthwith paid by him (her, *or* them, *as the Caſe may be.*)

No. LXVI.

Geo. III, 39, c. 55, paſſed June 13, 1799, *An Act for encouraging the Improvement of Lands ſubject to the Servitude of Thirlage, in that Part of Great Britain called Scotland.*

1, It ſhall be lawful to the Proprietor ... of any Lands or Tenements thirled or aſtricted to any Mill ... or to the Proprietor of any Mill to which the Lands or Tenements of any other Perſon are thirled or aſtricted ... to apply to His Majeſty's Sheriff or Steward Depute of the County or Stewartry ... or to his Subſtitute, by a Petition, ſetting forth ſuch his or their Deſire, and ſpecifying the Lands and Tenements ſo thirled which he or they is or are deſirous ſhould be freed from ſuch Thirlage, and the Mill or Mills to which ſuch Lands or Tenements are ſo thirled, and alſo the Nature of the Thirlage, the ſeveral Species of Corn or Grain over which it is extended, the Quantity of Multure paid for grinding every Sort of Grain, the Services dependent on the Right, and the total Amount of the Multures and other Dues claimed or allowed to be due; which Petition the ſaid Sheriff or Stewart Depute or Subſtitute ſhall order to be ſerved on the other Party or Parties intereſted in the ſaid Thirlage, and on the Tenant or Tenants of the Mill or Mills deſcribed in the ſaid Petition, and ſhall alſo cauſe an edictal Citation to be made of all Parties having, or pretending to have, intereſt in the ſaid Thirlage, at the Church or Churches of the Pariſh or Pariſhes within which the Mill, and alſo the Lands thirled thereto, are ſituated; and the Party or Parties on whom ſuch Petition is ſerved ſhall, within 40 Days after ſuch Service and Citation, if within Scotland, or if furth thereof then within 60 Days, lodge with the Sheriff or Steward's Clerk their Anſwers to the Petition, (and if any of the ſaid Subjects are entailed, on the next ſubſtitute Heir of Entail within the Kingdom who would ſucceed, failing the Heir in Poſſeſſion and his Family), and ſhall therein ſet forth all Objections they may have, either to any further Procedure, or to the Matter of the ſaid Petition, and they ſhall alſo ſtate every Claim, Demand, or De-

Application how made.

Service on the other party.

Entail.

GEO. III, 39, c. 55. —THIRLAGE ACT.

duction which they are either then or afterwards to make or crave; which Petition and Anſwers the Sheriff or Steward Depute, or his Subſtitute, ſhall immediately take into Conſideration, and within 30 Days ſhall make an Order or Decree, finding and declaring the preciſe Matters in the ſaid Petition and Anſwers, which are relevant to paſs to the Knowledge of a Jury in Manner after mentioned, and 20 Days from the Date of ſuch Order or Decree having elapſed, or in Caſe of any Advocation, Suſpenſion, or other Stay by the Authority of a Superior Court, within 10 Days after ſuch Advocation, Suſpenſion, or other Stay has been diſcuſſed and removed, the Sheriff or Steward Depute, or his Subſtitute, ſhall pronounce an Interlocutor, appointing a Jury to be ſummoned on a certain Day, to be expreſſed in the ſaid Interlocutor at the Diſtance of not leſs than 30, and not more than 40 Days from the Date of ſuch Interlocutor, to give their Verdict or Determination on the Matters contained in the ſaid Petition and Anſwers, and decree made thereon by the ſaid Sheriff, or Steward Depute or Subſtitute, or by a ſuperior Court, in ſuch Manner and for ſuch Purpoſe as herein after is directed; and the ſaid Sheriff, or Steward Depute, or his Subſtitute, is hereby directed and required to ſummon an Aſſize of at leaſt 21 impartial and diſintereſted Men, each of whom ſhall be an Heritor, or Tenant of Land paying 30l. Sterling of yearly Rent, within the ſaid County or Stewartry, or in the Caſe of Heritors occupying their own Lands, then of 30l. Scots of valued Rent, on ſuch Day as ſhall be mentioned in the Interlocutor aforeſaid; which Aſſize being called on the ſaid Day, the Number of Perſons then attending on the ſaid Aſſize ſhall be reduced to Nine by each Party, (that is, the Proprietor of the Mill on the one Part, and the Proprietor or Proprietors of the thirled Lands or Tenements on the other), ſtriking off alternately, beginning on the Part of the Proprietor of the Mill, or, in Caſe of any of the Parties not appearing, by the Sheriff or Steward Depute or Subſtitute ſtriking off for and on Behalf of ſuch Party, till the Number be reduced to Nine, who ſhall be ſworn and conſtitute a Jury for the Determination of the annual Value of the Thirlage Services and Preſtations thereto annexed, which is ſubmitted to their conſideration; before which Jury and the ſaid Sheriff, or Stewart Depute or Subſtitute, the ſaid Petition and An-

Order.

Summoning the jury.

Aſſize reduced.

Jury conſtituted.

ſwers, or Decree, together with ſuch Evidence as any of the Parties may incline ſhall be laid, which Evidence ſhall be taken in Writing, and remain for four Years at leaſt upon Record in the Court where it was taken; and after deliberating thereon, and hearing Parties and their Procurators, if they ſhall deſire to be heard, and upon a due Conſideration of all the Circumſtances of the Caſe, the ſaid Jury ſhall, by their Verdict or Determination, fix and aſcertain the Amount of ſuch annual Payment in Grain, of ſuch Kinds, and in ſuch Quantity and Amount as to the ſaid Jury ſhall appear to be a juſt, fair, and equal Value and Compenſation for the ſaid Right of Thirlage, and all and every Service, Preſtation, or Reſtriction thereto annexed or incident; of which Verdict or Determination an Abbreviate ſhall be regiſtered by any of the Parties in the General Regiſter of Saſines at Edinburgh, or the particular Regiſter for the ſaid County or Stewartry, within ſixty Days after the pronouncing of ſuch Verdict or Determination: Provided always, That nothing herein contained ſhall invalidate or infringe the Right competent to the Proprietor of any Mill for ſupporting and repairing the Mill-dam, and the Lead or Aqueduct conducting the Water to ſuch Mill, by taking Stones, Turf, or other Materials, from the thirled Lands of any neighbouring Heritor along which the ſaid Aqueduct paſſes, or of deepening or clearing the ſame, conform to uſe and wont.

GEO. III, 39, c. 55, —THIRLAGE ACT.

Jury fixing the amount of the annual payment.

Reſervation of rights as to repairing mill-dams.

2, IT ſhall be lawful to the ſaid Sheriff, or Stewart, Depute or Subſtitute, and they are hereby empowered and authorized to decide and determine, by their Order or Decree, on the ſaid Petition and Anſwers, all Queſtions in Law therein contained, reſpecting the Nature, Quality, and Extent of the Thirlage to be valued, and Services, Preſtations, and Reſtrictions thereto incident, or the Claims, Demands, and Deductions made or craved by either of the Parties, any Law or Practice to the contrary notwithſtanding.

Juriſdiction veſted.

3, PROVIDED always, That it ſhall not be lawful to the ſaid Sheriff, or Stewart Depute or Subſtitute, to pronounce any Judgment or Decree, finding or declaring Lands to be thirled or aſtricted to a Mill where the Proprietor of the Lands denies the Exiſtence of any ſuch Right of Thirlage, unleſs the other Party produce an Extract of a Decree of Declarator, pronounced by the Court of Seſſion, or ſufficient Evi-

Limitation thereof.

GEO. III, 39. c. 55. —THIRLAGE ACT.

dence thereof in Proof of his Right, and that the ſaid Sheriff, or Stewart Depute or Subſtitute, ſhall (ſuch Production not being made) diſmiſs the Petition, in ſo far as regards the Lands which are denied to be thirled, and proceed only to the Valuation of the Thirlage of thoſe Lands which are confeſſed to be thirled, as in Manner is before directed.

Verdict not to be reduced after three years.

4, THAT after the Expiry of three Years from the Regiſtration of the Verdict of the Jury, the ſaid Verdict, and the Proceedings had relative thereto, ſhall not be reduced, ſet aſide, reviewed, altered, or amended by the Court of Seſſion, or any other Judicatory, for any Neglect of the Proviſions herein contained, or for any Informality or Error, or for any other Reaſon or Pretext whatever; and if any Party ſhall purſue any Proceſs of Reduction of the Verdict of the Jury, or other Proceſs for ſetting the ſame aſide, or for altering or amending the ſame in the Court of Seſſion, and ſhall fail in ſuch Purſuit or Proceſs, ſuch Party proſecuting as aforeſaid ſhall be liable to the other Party or Parties in full Coſts of Suit.

Grain to be valued by the fiar.

5, THAT after ſuch Verdict and Determination, the Servitude of Thirlage . . . ſhall ceaſe to be exigible from or binding upon either or any of the Parties, but that in lieu thereof, the ſaid Proprietor or Proprietors, Occupier or Occupiers of the thirled Lands or Tenements, ſhall be bound and obliged to pay, and the Proprietor of the Mill to which the ſaid Lands or Tenements are thirled ſhall be bound and obliged to receive annually, at the Mill where the Multure under the former Servitude of Thirlage was in Uſe to be paid, or at ſome other convenient Place to be fixed by the Jury, ſuch Quantity or Amount of Corn or Grain, of ſuch Kind or Sort, Kinds or Sorts, as the ſaid Jury ſhall, in Manner aforeſaid, determine to be a juſt Compenſation or Equivalent for ſuch Right of Thirlage, or in the Option of the Payer, the Value of ſuch Corn or Grain in Money, according to the Value or Price put upon ſuch Kind or Kinds of Corn or Grain by the Fiars of the County in which the Grain is payable for the Year within which ſuch Payment is due.

Non-attendance.

6, THAT ſuch Verdict or Determination ſhall not be prevented or delayed by the Abſence or Non-attendance of any Perſon intereſted in ſuch Thirlage, but that the Jury ſhall proceed on ſuch Evidence as ſhall be produced to them by

ıy of the Parties then and there attending, and pronounce ıch Verdict and Determination as aforeſaid, which ſhall be ; valid and effectual, to all Intents and Purpoſes, as if all ıe Parties intereſted therein had attended, and been heard ı relation thereto; but it is alſo provided, that if any of the arties ſhall ſhow ſufficient Reaſon for adjourning the ſaid)ay appointed for taking the Verdict of the Jury, it ſhall e lawful for the ſaid Sheriff, or Steward Depute or Subſtiıte, to make ſuch Adjournment to any Day within thirty)ays from the Day firſt appointed, the Party praying an .djournment always defraying all Expences thereby inırred.

GEO. III, 39, c. 55. —THIRTAGE ACT.

Adjournment, when it may take place.

7, THAT the annual Payment, herein above directed to e made in lieu and Satisfaction of the ſaid Servitude of 'hirlage, ſhall be payable at the Term of Candlemas in each 'ear, the firſt Payment to be made at the Term of Candleıas immediately ſubſequent to the Date of the Verdict or)etermination of the ſaid Jury, the Amount of which firſt ayment ſhall be fixed by the ſaid Jury, according to ſuch roportion as they ſhall judge reaſonable on the whole Cirımſtances of the Caſe.

Terms of payment.

8, THAT where the Mill or Mills aforeſaid, with the .ights of Thirlage thereto annexed, are let to Tenants unır Tacks or Leaſes, the annual Payment in Grain or Moıy ſo as aforeſaid to be paid as a Commutation or Equivant for the Right of Thirlage annexed to ſuch Mill, ſhall ıd the ſame is hereby declared to be payable, during the 'erm or Currency of ſuch Tack or Leaſe, to the Tenant or eſſee of ſuch Mill or Mills, and ſuch annual Payment ſhall ı to ſuch Tenant or Leſſee, Tenants or Leſſees, full Comenſation for . . . the ſaid Right of Thirlage let to him r them by ſuch Tack or Leaſe, ſuch Tack or Leaſe, or ny Condition or Preſtation therein contained notwithanding; and where the Lands of the ſervient Tenement, r Eſtate thirled, are let in Leaſe to Tenants, and the 'roprietor ſhall pay the Annual or Equivalent, the Leſſees ıall, in that Caſe, be obliged to make Payment to the 'roprietor of a Proportion of the ſaid annual Commutaion or Equivalent, correſponding to the Rent of the Lands ıt in Leaſe, compared with the total Amount of Rent payble by the whole Lands thirled; and that the ſaid Proporion of the ſaid annual Commutation or Equivalent ſhall be

During the currency of a tack, to whom is the annual ſum payable.

If the proprietor pays the ſame duly.

GEO. III, 39, c. 55. —THIRLAGE ACT.

recoverable by the Proprietor, in the ſame Manner in which he is entitled to recover his Rent.

9, THAT if the Proportion by Rent ſhall be objected to by Tenants paying One-fourth or more of the Rent of the Lands thirled, the ſaid Jury ſhall then divide, according to the beſt of their Judgment, the different Parts of the Commutation, to be paid by the ſeveral Tenants according to the Value of Multure Services, and Preſtations legally exigible from the ſeveral reſpective Farms, occupied or poſſeſſed by them, or if the Parties are not then prepared, the Sheriff, or Steward Depute or his Subſtitute, is hereby authorized and required, at the Requeſt and Deſire of the above mentioned Proportion of the Tenants, again to convene the aforeſaid Jury, in Manner and with Notice as above directed, and that on any Day within the Space of two Months from the Date of their firſt Award, when the ſaid Jury ſhall meet and make ſuch Diviſion.

Dividing of the commutation.

10, THE Diſcharge of the Multures, Mill Services, and other Rights belonging to a Proprietor of a Mill, as to the whole or any Part of the Lands aſtricted to it, and the Subſtitution of an annual Payment, by Way of Compenſation, in Place thereof, in the Manner above provided for, ſhall afford to ſuch Proprietor no Ground or Pretence for claiming Relief from any Part of the Ceſs or Land Tax payable by him in reſpect thereof, either where ſuch Mill ſtood ſeparately valued in the Ceſs Books, or where it was included in a joint or *cumulo* Valuation with other Parts of his Property . . . and it ſhall not, in any Ways, affect or impair any Right of Freehold or Qualification to elect or be elected as a Member of Parliament, ariſing from or founded upon it, either where the Mill, with its Mill Lands and Multures, of itſelf affords ſuch Qualification, in reſpect of its Valuation or old Extent, or where it makes Part of a Tenement, which forms ſuch Qualification, either on its Valuation, or as ſeparately retoured, of an Extent ſufficient for that Purpoſe.

No diminution of the ceſs, &c.

Not to affect the freehold.

11, AND whereas there is a Kind of Thirlage known in the Law and Practice of Scotland, called a Thirlage of *invecta et illata*, to which ſundry Towns . . . are liable, be it therefore enacted, that if any Inhabitant . . . of ſuch Town . . . ſhall be deſirous to purchaſe an Exemption from the ſaid Servitude of Thirlage, it ſhall be lawful . . . to apply, in

Invecta et illata.

Manner above mentioned, to the Sheriff or Steward Depute of the County or Stewartry in which ſuch Town ... is ſituate, who ſhall take ſuch Proceedings, and ſummon a Jury, as herein before particularly directed, which Jury ſhall, by their Verdict, fix and determine the full Value in Money of ſuch Right of Thirlage in Perpetuity, on which Verdict and Determination the ſaid Sheriff, or Steward Depute or Subſtitute, ſhall pronounce Decreet againſt the Perſon or Perſons ſo petitioning or applying to him as aforeſaid, for the Sum ſo fixed and determined by ſuch Jury, on Payment of which to the Proprietor of the Mill, ſuch Town ... or Place, or ſuch Inhabitant or Inhabitants thereof, formerly ſubject to ſuch Thirlage, ſhall thenceforth be for ever freed and relieved from the ſame. GEO. III, 39, c. 55. —THIRLAGE ACT.

12, SUCH Proceeding may take Place, and ſuch Exemption be purchaſed ... notwithſtanding the Mill ... be held ... under a Deed ... of Entail, provided that the Price paid for the ſame ... ſhall be ſettled and ſecured in like Manner as is directed in the Caſe of Superiorities ſold to the Vaſſals of entailed Eſtates, by 20 Geo. II, c. 50.

13, AND whereas it may happen that a Mill, and ſome of the Lands thirled to it, may be within different Counties or Stewartries, be it enacted, that, in ſuch Caſe, the Application ſhall be made to the Sheriff or Steward of the County or Stewartry in which the Mill is ſituated, before whom the Parties concerned, who live without his Juriſdiction, may be cited.

No. LXVII.

GEO. III, 43, c. 54, *An Act for making Proviſion for the Parochial Schoolmaſters, and for making further Regulations for the better Government of the Pariſh Schools in Scotland.*

WHEREAS, &c. From and after the Term of Martinmas next, the Salary of each Parochial Schoolmaſter in every Pariſh of Scotland, ſhall not be under the Sum of 300 Marks Scots per Annum, nor above the Sum of 400 Merks Scots per Annum, except in the Caſes herein after mentioned. Salary to ſchoolmaſters.

GEO. III, 43, c. 54.—SCHOOLMASTERS.

Heritors and minister of the parish to fix such salaries.

2, WITHIN Three Months after the passing of this Act, the Heritors possessed of the Qualification required by this Act, and the Minister of every Parish, shall hold a Meeting, of which Intimation shall be given from the Pulpit immediately after Divine Service in the Forenoon, and by circular Letters, to be written by the Minister of the Parish, to such Heritors having the Qualification prescribed by this Act, who are non-resident, and also by leaving a written Notice at the Mansion-house of every Heritor, whether resident or not, at least Thirty free Days before such Meeting shall take Place; and on due Consideration of the Circumstances of the particular Parish in respect of Extent, Population, and valued Rent, and the probable Amount of the other Emoluments of the Schoolmaster's Office, such Meeting shall judge and determine whether the Schoolmaster's Salary shall be 300 Merks Scots per Annum, or 400 Merks Scots per Annum, or such Sum between these two Sums as to such Meeting shall seem most suitable to the Circumstances of the Parish, and shall fix and determine the Amount of the Schoolmaster's Salary, to be paid to the Schoolmaster, by a Resolution to be made at such Meeting, a Copy of which Resolution, signed by the Preses of the Meeting, shall be delivered to the Schoolmaster of the Parish as his Authority for collecting and receiving the Salary thereby fixed and determined, which shall be paid by the several Heritors at the same Terms apportioned among them, in the same Manner, and with the same Relief against their Tenants, as is provided by the aforesaid Act of the Parliament of Scotland, passed in the Year 1696: Provided always, That no Salary at present payable to any Schoolmaster shall be diminished; and in all Cases where any such Salary, or any Part thereof, is payable in Grain or Meal, such Salary in Grain or Meal shall continue to be paid and payable in the same Manner as heretofore, with such Additions thereto in Money, as to such Meeting shall seem proper; and in fixing and determining the Amount of the Salary to be paid pursuant to this Act, such Grain or Meal making Part of such Salary shall be estimated at the Rate of 200 Merks per Chalder.

Salaries payable in grain or meal to continue to be so paid; and to be estimated at the rate of 200 merks per chalder.

Salaries so fixed to be payable for 25 years.

3, THE Salaries so fixed and determined in Manner above directed, shall continue to be the Salaries payable to the Schoolmaster of every Parish for and during the Period of 25 Years from and after the passing of this Act; and

within Three Years after the Expiration of 25 Years from the paſſing of this Act, the Sheriff or Stewart of every County or Stewartry ſhall fix and determine according to the Average Amount of the Fiars of the County or Stewartry for the 25 Years preceding, what is the Value or Average Price of a Chalder of Oatmeal, and he ſhall make a Return of ſuch Average to the Office of King's Remembrancer in Exchequer in Scotland, and the Lord Chief Baron and Barons of Exchequer are hereby empowered and required, from ſuch Returns by the Sheriffs and Stewarts of Scotland, to ſtrike the Average Price of a Chalder of Oatmeal for all Scotland; and an Order of the ſaid Court of Exchequer fixing ſuch Average ſhall, within Three Months from the Date of the laſt Return by the Sheriffs and Stewarts, be publiſhed by the King's Remembrancer in the Edinburgh Gazette, and ſuch other Scots Newſpapers as he ſhall deem ſufficient, for Three ſucceſſive Weeks, and a Copy thereof ſhall alſo be tranſmitted by the ſaid Remembrancer to the Sheriff or Stewart Clerk of every Shire or Stewartry in Scotland; which Average ſo aſcertained ſhall be the Rate according to which the Schoolmaſter's Salary ſhall be fixed in the Manner herein after directed, and the Sheriff or Stewart Clerk ſhall tranſmit a Certificate thereof, ſigned by him, to the Miniſter of each Pariſh within the County or Stewartry, to be by him ſubmitted to the Meeting directed to be called in Manner immediately after mentioned.

Mode of fixing the average price of a chalder of oatmeal.

Average price ſo aſcertained ſhall be the rate of ſchoolmaſters' ſalaries.

4, WITHIN Three Months after the Date of ſuch Certificate, the Heritor poſſeſſed of the Qualification required by this Act, and the Miniſter of every Pariſh in Scotland, ſhall hold a Meeting, of which Intimation ſhall be given from the Pulpit immediately after Divine Service in the Forenoon, and by Circular Letters, to be written by the Miniſter of the Pariſh to ſuch Heritors having the Qualification preſcribed by this Act, who are non-reſident, and alſo by leaving a written Notice at the Manſion-houſe of every Heritor, whether reſident or not, at leaſt 30 free Days before ſuch Meeting ſhall take place; and on due Conſideration of the Circumſtances of the particular Pariſh in reſpect of Extent, Population, and valued Rent, ſuch Meeting ſhall judge and determine whether the Schoolmaſter's Salary of the ſame ſhall be equal to the Average Price of One Chalder and a Half, or of Two Chalders of Oatmeal according to the

Heritors and miniſter to meet within three months after the date of certificate of ſuch average price, and fix the amount of ſchoolmaſters' ſalaries.

GEO. III, 43, c. 54. —SCHOOL-MASTER.

Amount thereof, aſcertained by the aforeſaid Certificate, or to ſuch Proportion between them as to ſuch Meeting ſhall ſeem moſt ſuitable to the Circumſtances of the Pariſh, and ſhall fix and determine the Amount of the Schoolmaſter's Salary, to be paid purſuant to ſuch Average and their Reſolution thereupon; a Copy of which Reſolution, ſigned by the Preſes of the Meeting, ſhall be delivered to the Schoolmaſter of the Pariſh, as his Authority for collecting and receiving the Salary thereby fixed and determined, which ſhall be paid to him by the ſeveral Heritors at the ſame Terms apportioned among them, in the ſame Manner, and with the ſame Relief againſt their Tenants, as is provided by the aforeſaid Act of the Parliament of Scotland, in the Year 1796.

In caſe of neglect, or diſſatisfaction with the determination, appeal may be made to the next quarter ſeſſions.

5, PROVIDED always, That in Caſe the Heritors and Miniſter ſhall neglect or refuſe to determine the Amount of the Salary to be paid to the Schoolmaſter according to the Proviſions of the Act, or in Caſe any Heritor, or the Schoolmaſter ſhall be diſſatisfied with the Determination made, it ſhall be competent, within Three Months after ſuch Meeting ought to have been held, or ſuch Determination ſhall have been made, for the Schoolmaſter to apply, or for ſuch Perſon ſo diſſatisfied to appeal, to the next Quarter Seſſions held for the Shire or Stewartry within the Bounds of which the Pariſh or Pariſh Kirk lies, whoſe Judgment ſhall be final; and no Appeal by Advocation, Suſpenſion, or otherwiſe, ſhall be admitted againſt the Judgment given at ſuch Quarter Seſſions: Provided always, that no Heritor of the Pariſh from whence ſuch Appeal comes ſhall vote upon ſuch Appeal at ſuch Quarter Seſſions.

At the end of every 25 years, the average price of the chalder of oatmeal, and the ſchoolmaſter's ſalary ſhall be aſcertained and fixed in manner before directed.

6, PROVIDED always, That after 25 Years ſhall have elapſed from the Time the Amount of a Schoolmaſter's Salary ſhall have been ſo fixed, the Sheriff of a Shire, Stewart of a Stewartry, ſhall within Three Months again determine the Average Price of a Chalder of Oatmeal in the Manner directed by this Act; and ſhall, as above directed, return the ſame to the Office of King's Remembrancer in Exchequer, and the Lord Chief Baron and Barons of Exchequer ſhall again, by an Order of Court, fix the Average Price for all Scotland; and the King's Remembrancer ſhall again tranſmit a Copy of ſaid Order of Court to the Sheriff or Stewart Clerk of each Shire or Stewartry, and the ſaid

Sheriff or Stewart Clerk ſhall again publiſh the ſame in the Edinburgh Gazette and Scots Newſpapers, and tranſmit a Certificate of ſaid Average and Order of Court to the Miniſter of each Pariſh within his Shire and Stewartry, and the Heritors and Miniſter ſhall again fix and determine the Schoolmaſter's Salary according to ſuch Average, ſuch Salary never being leſs than the Value of One Chalder and an Half, nor more than Two Chalders for the next 25 Years, and ſo *toties quoties* at the End of every 25 Years for ever, unleſs altered by Parliament; and every ſuch Determination of Salary ſhall be liable to Appeal to the Quarter Seſſions in Manner and to the Effect above directed. GEO. III. 43. c. 54. —SCHOOLMASTERS.

7, PROVIDED always, That in every Pariſh where there is only One Heritor qualified as herein after preſcribed, ſuch Heritor ſhall have Two Votes at every Meeting directed to be held purſuant to this Act; and in all Meetings where no Preſes has been choſen, the Heritor preſent poſſeſſed of the higheſt Valuation ſhall have the caſting Vote. Where there is but one qualified heritor, he ſhall have two votes.

8, IN every Pariſh where a commodious Houſe for a School has not already been provided, purſuant to the Directions in the above recited Act, and in every Pariſh where a Dwelling-houſe for the Reſidence of the Schoolmaſter has not already been provided, together with a Portion of Ground for a Garden to the Extent hereafter mentioned, the Heritors of every ſuch Pariſh ſhall provide a commodious Houſe for a School, and alſo a Houſe for the Reſidence of the Schoolmaſter, ſuch Houſe not conſiſting of more than Two Apartments including the Kitchen, together with a Portion of Ground for a Garden to ſuch Dwelling-houſe, from Fields uſed for the ordinary Purpoſes of Agriculture or Paſturage, as near and convenient to the Schoolmaſter's Dwelling-houſe as reaſonably may be, which Garden ſhall contain at leaſt One-fourth Part of a Scots Acre, and ſhall be incloſed with ſuch Fence as is generally uſed for ſuch Purpoſes in the Diſtrict of the County where it is ſituated; and the Expence of providing ſuch School-houſe, Dwelling-houſe, and Garden, and ſupporting the ſame, ſhall be defrayed and paid in the ſame and like Manner as is preſcribed for providing a Houſe for a School by the aforeſaid Act of the Parliament of Scotland: Providing always, that where the Heritors ſhall determine that ſuch Garden cannot be allotted to the Schoolmaſter without great Loſs and Incon- A ſchool-houſe and dwelling-houſe and garden to be provided where there are none. If no garden, an additional ſalary.

GEO. III, 43, c. 54. —SCHOOL-MASTERS.

venience, it ſhall be optional to them, with the Authority of the Quarter Seſſions of the County or Stewartry, to aſſign to the Schoolmaſter, in lieu of ſuch Garden, an Addition to his Salary, at the Rate of Eight Bolls of Oatmeal per Acre, to be computed according to the Average aſcertained in Manner herein before directed.

In caſe of neglect or diſſatisfaction, ſchoolmaſters may apply to Quarter Seſſions.

9, IN Caſe the Heritors ſhall neglect or refuſe to Provide the Accommodations of Houſe, School-houſe, and Garden, or additional Salary in lieu thereof, to Schoolmaſters according to the Proviſions of this Act, or in Caſe the Schoolmaſter ſhall not be ſatisfied with the Accommodations afforded him, it ſhall be competent for him to bring the ſame by Repreſentation or Petition before the Quarter Seſſions held for the Shire or Stewartry to which the Pariſh of which he is Schoolmaſter belongs, or in which the Pariſh Kirk is ſituated; and in all ſuch Caſes the Judgment of the Quarter Seſſions ſhall be final, without any further Appeal by Advocation, Suſpenſion, or otherwiſe: Provided always, That no Juſtice of the Peace who ſhall be an Heritor in the Pariſh of ſuch Schoolmaſter ſhall Vote upon ſuch Repreſentation or Petition.

Relief to heritors, whoſe ground ſhall be taken for ſchool-houſe, &c. ſhall be ſettled by the Sheriff.

10, PROVIDED always, That the Heritor or Heritors from whoſe Eſtates any Ground ſhall be taken for the Purpoſe of ſuch School-houſe, Dwelling-houſe, and Garden, ſhall have his, her, or their Relief againſt the other Heritors of the Pariſh, for the Value of the Ground ſo to be taken in Proportion to the valued Rent of the Lands belonging to the whole Heritors in the Pariſh; ſuch Relief to be ſettled only by the Sheriff or Stewart of the County or Stewartry, without Appeal by Advocation, Suſpenſion, or otherwiſe.

Regulations to be obſerved when pariſhes conſiſt of two or more iſlands, or of great extent, where one parochial ſchool would be inſufficient.

11, IN Caſe of thoſe Pariſhes which conſiſt of Diſtricts detached from each other by the Sea or Arms of the Sea, or otherwiſe, as where a Pariſh conſiſts of Two or more Iſlands, of which there are ſeveral Inſtances in the Highlands, North Iſles, and Hebrides, or where it is otherwiſe of great Extent or Population, ſo that one Parochial School cannot be of any effectual Benefit to the whole Inhabitants of ſuch Pariſhes, it ſhall be competent to the Heritors and Miniſter, if they ſhall ſee cauſe, on fixing a Salary of Six Hundred Merks, or the Value of Three Chalders of Oatmeal, to be computed according to the Proviſions of this Act, to divide the ſame among Two or more Teachers according to the

Extent and Population of the Pariſh; and theſe Proportions ſo divided ſhall be Paid to Teachers of Schools in the ſame Way and Manner, and under the ſame Conditions, as hereafter are ſpecified by this Act, for ſupplying Vacant Parochial Schools with Maſters; but in reſpect that the Heritors of ſuch Pariſhes are to Pay an higher Salary, they are hereby Exempted from the Obligation of Providing Schoolhouſes, Dwelling-houſes, and Gardens, for the Teachers among whom the Salary is to be divided in the manner aforeſaid; and in caſe a difference of Opinion ſhall ariſe among the Heritors reſpecting the Propriety and Uſefulneſs of ſuch Diviſion of the Salary, the ſame ſhall be Submitted by Petition or Repreſentation to the Quarter Seſſions of the Shire or Stewartry within the bounds of which the Pariſh or Pariſh Kirk is ſituated; and the Judgment thus obtained ſhall be final, without Appeal by Advocation, Suſpenſion, or otherwiſe. GEO. III, 43, c. 54. —SCHOOL-MASTERS.

12, PROVIDED always, That none of the Proviſions of this Act ſhall apply to the caſe of a Pariſh, which conſiſts only of a Royal Burgh, or part of a Royal Burgh. Not to extend to royal burghs.

13, WHERE a Pariſh conſiſts of a Royal Burgh, or part of a Royal Burgh, and a Landward Heritor or Heritors, the Schoolmaſter ſhall be Appointed and Maintained by the Burgh, or by the Landward Heritor or Heritors, or by the Burgh and Landward Heritors, in the ſame Way and Manner, and according to the ſame Proportions that have hitherto been obſerved in ſuch Pariſh; the Salary and Accommodations being always equal in Value to thoſe Provided by this Act, and the ſame Remedy being allowed in caſe they are otherwiſe, and to be applied for in the Manner already ſpecially pointed out; and provided any Additions ſhall be granted, the ſame ſhall be Paid in the ſame Proportions by the Parties from whom the preſent Salary is received. Where a pariſh conſiſts of a burgh and a landward heritor, ſchoolmaſter to be appointed and maintained as heretofore, &c.

14, FROM and after the paſſing of this Act, in caſe of Vacancy in the Office of Schoolmaſter, by Death or otherwiſe, the Miniſter of the Pariſh ſhall, within 15 Days, Intimate, or cauſe to be Intimated from the Pulpit, immediately after Divine Service in the Forenoon, the Vacancy which has taken place, and communicate the Knowledge of the ſame by Letter to ſuch Heritor or Heritors as may be non-reſident; and the Heritors poſſeſſed of the Qualification required by this Act, with the Miniſter of the Pariſh, Schoolmaſters to be elected in caſes of vacancies.

GEO. III, 43, c. 54. —SCHOOL-MASTERS.

are hereby appointed to hold a Meeting, of which Intimation ſhall be given by the Miniſter, by edictal Citation and circular Letters to ſuch as are non-reſident, at leaſt 30 free Days before it takes place; and ſuch Meeting, or adjourned Meeting, ſhall elect a Perſon to the Vacant Office of Schoolmaſter; and in the event of the Pariſh being Vacant, the Preſbytery ſhall appoint ſome One of their number to make the Intimations and give the Notices which, according to the proviſions of this Act, the Miniſter is required to do.

On failure, the Commiſſioners of Supply to appoint.

15, PROVIDED always, That if the Heritors qualified as is hereby required, and Miniſter, ſhall fail to elect a Schoolmaſter within Four Calendar Months from the time the Vacancy ſhall have taken place, then the Preſbytery within the bounds of which the Pariſh is ſituated, ſhall apply to the Convener of the Commiſſioners of Supply of the County or Stewartry, who, or any Five of them, at a Meeting to be called by the Convener upon 30 Days notice, ſhall have power, *jure devoluto*, and are hereby directed to elect a Perſon to ſupply the Vacancy.

Schoolmaſters to be examined and approved by the Preſbytery.

16, EVERY Schoolmaſter elected under the proviſions of this Act, ſhall carry the Minutes, or an extract or certified Copy of the Minutes of his election to the Preſbytery, accompanied with Atteſtations of his having taken the Oath to his Majeſty before any one of his Majeſty's Juſtices of the Peace; and the Preſbytery ſhall thereupon take trial of his ſufficiency for the Office, in reſpect of Morality and Religion, and of ſuch Branches of Literature as by the Majority of Heritors and Miniſter ſhall be deemed moſt neceſſary and important for the Pariſh, by Examination of the Preſentee, by Certificates and Recommendations in his Favour, by their own perſonal Enquiry or otherwiſe, and ſhall ſee him ſign the Confeſſion of Faith and Formula of the Church of Scotland; and their Judgment or Determination as to the Qualifications of ſuch Preſentee for the Office of Schoolmaſter ſhall not be reviewed or ſuſpended by any Court, Civil or Eccleſiaſtical; and provided they are ſatisfied with the ſame, he ſhall be furniſhed with an Extract from their Minutes, bearing that he had appeared, produced the Atteſtations required, and had been found on Trial duly qualified for diſcharging the Duties of the Office to which he had been elected, which Extract ſhall complete his Right to the Emoluments provided by this Act.

17, PROVIDED always, That in caſe the Perſon elected is not found duly qualified, the Heritors and Miniſter ſhall only be allowed what remained of the Four Months, at the time of his Election, with ſo many days more as required by this Act. 43 GEO. III, c. 54. —SCHOOL-MASTERS. If found unqualified, time allowed to the heritors and miniſter.

18, THE Heritors qualified as is hereby required, and Miniſter, in a Meeting called on 30 Days notification from the Pulpit, and by Letter from the Miniſter to the non-reſident Heritors, and by notice to be left at the Manſion-houſe of each Heritor, whether reſident or not, ſhall have the power of fixing the School Fees from time to time as they ſhall judge expedient; and a Table of ſuch Fees, ſigned by the Preſes of the Meeting, ſhall be hung up in the School-room: Provided always that the Schoolmaſter ſhall be obliged to teach ſuch Poor Children of the Pariſh as ſhall be recommended by the Heritors and Miniſter at any Parochial Meeting. Heritors and miniſter to fix the ſchool fees.

19, THE ſuperintendance of Schools ſhall continue with the Miniſters of the Eſtabliſhed Church as heretofore, according to the ſeveral Acts of Parliament reſpecting the ſame, except in ſo far as altered by this preſent Act. Superintendance of ſchools continued to miniſters.

20, As often as Preſbyteries, in the courſe of their Viſitation, ſhall find any thing wrong with reſpect to the Hours of Teaching, or the length of the Vacation annually given, or when any complaint ſhall be made to them upon thoſe ſubjects by Parties concerned, they ſhall have the power of regulating the ſame in the manner they may judge moſt conſiſtent with the particular circumſtances and general good of the Pariſh; and the Schoolmaſter is hereby required to conform to and obey all Regulations ſo made by the Preſbytery, under pain of Cenſure or Suſpenſion from or Deprivation of his Office, as to the Preſbytery ſhall ſeem proper. Preſbyteries to regulate hours of teaching,

21, THAT when any complaint from the Heritors, Miniſter, or Elders, againſt the Schoolmaſter, charging him with neglect of Duty, either from engaging in other Occupations, or from any other cauſe, or with immoral conduct, or cruel and improper treatment of the Scholars under his charge, ſhall be preſented to the Preſbytery, they ſhall forthwith take cognizance of the ſame, ſerve him with a Libel if the articles alleged appear to them to be of a nature which requires it; and having taken the neceſſary Proof, and to take cognizance of ſchoolmaſters conduct.

43 GEO. III, C. 54. —SCHOOL-MASTERS.

they ſhall acquit or paſs Sentence of Cenſure, Suſpenſion, or Deprivation, as ſhall appear to them proper upon the reſult of ſuch inveſtigation; which Judgment ſhall be final, without Appeal to or Review by any Court, Civil or Eccleſiaſtical; and in caſe they ſhall depoſe the Incumbent from the Office of Schoolmaſter, his right to the Emoluments and Accommodations of the ſame ſhall ceaſe from the time of his Depoſition; and in caſe he ſhall fail or refuſe to remove from the School, School-houſe, and Garden, within the ſpace of Three Months from the date of ſuch Sentence or Depoſition, the Sheriff of the Shire, or Stewart of the Stewartry, upon having an Extract or Certified Copy of the Sentence of Depoſition by the Preſbytery laid before him, ſhall forthwith grant Letters of Ejection againſt ſuch Schoolmaſter, of which no Bill of Suſpenſion or Advocation, nor Action of Reduction ſhall be competent; and in caſe of ſuch Depoſition, the School ſhall immediately be declared vacant, and the Election of another Schoolmaſter ſhall take place.

Qualification of heritors.

22, PROVIDED always, That it ſhall not be lawful for any Heritor who is not a Proprietor of Lands within the Pariſh, to the extent of at leaſt 100 Pounds Scots of valued Rent appearing in the Land Tax Books of the County within which ſuch Pariſh is ſituated, to attend or vote at any Meeting held purſuant to this Act; but every Heritor qualified as above may vote by Proxy, or by Letter under his Hand.

Former acts confirmed.

23, PROVIDED alſo, That all former Acts and Statutes with regard to Pariſh Schools or Schoolmaſters are hereby ratified and confirmed, in ſo far as they are not altered by the expreſs Proviſions of this Act.

No. LXVIII.

45 Geo. III, c. 10, *An Act for making further Provision for the effectual Performance of Quarantine.*

Whereas by an Act, passed in the Thirty-ninth and Fortieth Years of the Reign of His present Majesty, intituled, *An Act for erecting a Lazaret on* Chetney Hill, *in the County of* Kent, *and for reducing into one Act the Laws relating to Quarantine, and for making further Provisions therein*, and by other Acts antecedent thereto, Provision was made as well for purchasing Lands for erecting a Lazaret as for defraying the Expences of building the same, and for maintaining a proper Establishment of Officers necessary for enforcing a due Performance of Quarantine; in pursuance of which, Lands were purchased at Chetney Hill, in the County of Kent, and progress was made in the Erection of a Lazaret there; but the Funds granted by the said Act of the Thirty-ninth and Fortieth Years of his present Majesty having been found insufficient for completing the same, and for the Payment of competent Salaries to the Officers who were to have the Charge thereof, and other necessary Expences attendant on the Quarantine Service, according to the Plan which had been approved of and directed by His Majesty, by and with the Advice of His Privy Council, a further Sum was granted by an Act of the last Session of Parliament: And whereas it is expedient that Provision should be made for a due Application of the same; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for the Lords Commissioners of His Majesty's Treasury, or any three or more of them, or the Lord High Treasurer for the time being, from and after the Commencement of this Act, to give Directions for completing the said Lazaret, upon the said Lands so purchased on Chetney Hill, in the County of Kent, with all necessary and convenient Accommodations for the Purpose of performing Quarantine, according to the Plan which has been approved of and directed by His Majesty, by and with the Advice of His Privy Council; or to such other Plan

39 & 40 G. III, c. 80.

Treasury to give directions for completing the Lazaret, and appoint Officers, &c.

45 G. III, c. 10.—QUARANTINE.

as His Majeſty, by and with the advice of his Privy Council, may from Time to Time approve and direct; and for defraying the Expences attending the ſame, to cauſe any Part of the Money ſo granted, to be iſſued when it ſhall be neceſſary for the ſaid Service; and the ſaid Lazaret when completed, and all the Buildings and Accommodations thereto belonging, ſhall be under the Management, Order, and Direction of ſuch Officers as ſhall be appointed by the Lords Commiſſioners of His Majeſty's Treaſury, or any Three or more of them, or the Lord High Treaſurer for the Time being, for keeping the ſame fit and ready for the Reception of Perſons and Goods, and for their due Performance of Quarantine; and ſuch Officers reſpectively ſhall have ſuch Salaries as ſhall from Time to Time be appointed by His Majeſty, by and with the Advice of His Privy Council: and the Salaries of the ſaid Officers, and all contingent Expences, ſhall be defrayed out of the Funds, and in the Manner in which the Charges and Expences of performing Quarantine are at preſent defrayed, until ſuch Time as a Revenue ſhall be raiſed ſufficient for thoſe Purpoſes, in the Manner herein-after-mentioned.

Floating Lazarets may be provided until the Lazaret ſhall be completed.

2. Provided always, and be it enacted, That until the ſaid Lazaret ſhall be in a State fit and proper to be uſed, it ſhall and may be lawful for the Lords Commiſſioners of His Majeſty's Treaſury to provide One or more Floating Lazarets, which ſhall be uſed for all the Purpoſes for which the ſaid Lazaret is intended by this Act; and all the Rules, Regulations, and Proviſions in this Act contained, ſhall be deemed and taken for all Intents and Purpoſes, to be applicable to ſuch Floating Lazaret or Lazarets, until the Lazaret on Shore ſhall, by His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or their Privy Council, and by Order of the ſame, notified by Proclamation or publiſhed in the London Gazette, have been declared to be fit for the due Performance of Quarantine therein.

Duties ſhall be paid by Owners of Veſſels.

3. And whereas it is reaſonable that Owners of Ships, Veſſels, and Cargoes, which in future ſhall have to perform Quarantine, ſhould defray the Charge incurred thereby; be it further enacted, That there ſhall be raiſed, levied, collected, and paid to His Majeſty, His Heirs and Succeſſors, the ſeveral and reſpective Duties of Cuſtoms herein-after mentioned; that is to ſay,

For every Ton Burthen of every Ship or Veſſel, which ſhip or Veſſel, or the Cargo of which, or any Part whereof, ſhall have performed Quarantine in any Port or Place in Great Britain, or the Iſlands of Guernſey, Jerſey, Alderney, Sark, or Man, and which ſhall have arrived from any Part of Turkey, or from any Port or Place in Africa, within the Streights of Gibraltar, or in the Weſt Barbary on the Atlantic Ocean, with a clean Bill of Health, Seven Shillings and Sixpence: 45 GEO. III. c. 10. —QUARANTINE. Duties.

For every Tun Burthen of every ſuch Ship or Veſſel, which ſhall have ſo arrived without a clean Bill of Health, Fifteen Shillings:

For every Ton Burthen of every ſuch Ship or Veſſel, which Ship or Veſſel, or the Cargo of which, or any Part whereof, ſhall have performed Quarantine in any Port or Place in Great Britain, or the Iſlands aforeſaid, and which ſhall have arrived from any Port or Place whatever, (except from any Part of Turkey, or from any Port or Place in Africa, within the Streights of Gibraltar, or in the Weſt Barbary on the Atlantic Ocean), with a clean Bill of Health, Three Shillings:

For every Ton Burthen of every ſuch Ship or Veſſel which ſhall have ſo arrived without a clean Bill of Health, Ten Shillings:

For every Ton Burthen of every ſuch Ship or Veſſel arriving in any Port or Place in Great Britain, or the Iſlands aforeſaid, with a Cargo which in Whole or in Part ſhall conſiſt of Goods, Wares, or Merchandize, the Growth, Produce, or Manufacture of Turkey, or of any Port or Place in Africa, within the Streights of Gibraltar, or in the Weſt Barbary on the Atlantic Ocean, and which Ship or Veſſel, or the Cargo of which, or any Part whereof, ſhall have performed Quarantine in any Port or Place in Great Britain, or the Iſlands aforeſaid, and which ſhall have arrived from any Port or Place whatever, Seven Shillings and Sixpence:

For every Ton Burthen of every Ship or Veſſel which ſhall have ſo arrived under ſuch Circumſtances as ſhall induce His Majeſty, by and with the advice of His Privy Council, or the Lords or others of the Privy Council, or any Three or more of them, under the Authority herein-after given, to ſubject ſuch Ship or Veſſel to the like Quarantine

45. GEO. III, C. 10. —QUARANTINE.

as Ships arriving from Turkey with clean Bills of Health, Seven Shillings and Sixpence:

For every Ton Burthen of every Ship or Veſſel which ſhall have ſo arrived under ſuch Circumſtances as ſhall induce His Majeſty, by and with the Advice aforeſaid, or the Lords or others of the Privy Council, or any Three or more of them as aforeſaid, to ſubject ſuch Ship or Veſſel o the like Quarantine as Ships arriving from Turkey without clean Bills of Health, Fifteen Shillings:

For every Ton Burthen of every Ship or Veſſel, which Ship or Veſſel, or the Cargo of which, or of any Part whereof, ſhall have performed Quarantine in any Port or Place in Great Britain, or the Iſlands aforeſaid, and which Ship or Veſſel ſhall enter Inwards in the Port of London, an additional Duty of One Shilling:

Duties ſhall be recovered as Duties of Cuſtoms.

All which ſeveral and reſpective Duties ſhall be raiſed, levied, collected, and paid, and ſhall be ſued for, recovered, and accounted for in the ſame Manner, and ſubject to the ſame Rules, Regulations, Penalties, and Forfeitures, as any Duties of Cuſtoms are now ſubject to by Law, as far as the ſame are applicable thereto: Provided always, that no Ship or Veſſel arriving in any Port or Place in Great Britain, or the Iſlands aforeſaid, with a clean Bill of Health, from any Port or Place whatever, except from any Part of Turkey, or from any Port or Place in Africa, within the Streights of Gibraltar, or in the Weſt Barbary on the Atlantic Ocean, in Ballaſt, or whoſe Cargo ſhall conſiſt wholly of Salt; nor any Ship or Veſſel which ſhall, together with its Cargo, have duly performed Quarantine in the Lazarets of Malta, Ancona, Venice, Meſſina, Leghorn, or One of them, and ſhall ſail from thence, and arrive at any Port or Place in Great Britain, or the Iſlands aforeſaid, with proper Documents and Vouchers atteſting the ſame, to the Satisfaction of His Majeſty, His Heirs or Succeſſors, or of His or their Privy Council, ſhall be liable or charged with any Duty under this Act.

Exemptions from Duties.

Duties may be reduced, and afterwards increaſed.

3. Provided always, and be it further enacted, That if after making good (in the Manner herein-after mentioned), to the Conſolidated Fund of Great Britain, of the Sums of Sixty-five thouſand Pounds, granted by the Act of the 39th and 40th Years of His preſent Majeſty, and of Thirty thouſand Pounds, granted by an Act of the laſt Seſſion of

Parliament, or of ſo much thereof as ſhall be found neceſſary to iſſue for the Services aforeſaid, it ſhall appear to the Lord High Treaſurer, or the Lord Commiſſioners of His Majeſty's Treaſury for the Time being, that the Duties hereby granted are more than ſufficient to defray the Charges and Expences already incurred, and alſo ſuch further Expences as may be neceſſary for carrying the ſeveral Purpoſes of this Act into Execution, it ſhall and may be lawful for the ſaid Lord High Treaſurer, or Lords Commiſſioners for the Time being, from Time to Time, by any Warrant or Warrants under the Hands of the ſaid Lord High Treaſurer, or of the ſaid Lords Commiſſioners for the Time being, or of any Three or more of the ſaid Lords Commiſſioners, to order and direct, that the Duties hereby granted ſhall be reduced in ſuch Proportion and Manner as they ſhall think proper, and alſo by like Warrant or Warrants (in caſe the ſaid neceſſary Expences ſhould afterwards require an Increaſe of the ſaid Duties), to order and direct that the ſame ſhall be again raiſed and increaſed to any Amount not exceeding the Sums which have been before granted by Parliament as aforeſaid; and ſuch Warrant or Warrants ſhall be ſufficient Authority to the Commiſſioners and Officers of the Cuſtoms for raiſing, levying, collecting, and recovering, the ſeveral and reſpective Duties ſpecified and contained in ſuch Warrant or Warrants; any Law or Uſage to the contrary notwithſtanding. 45 GEO. III, c. 10.—QUARANTINE.

5. And be it further enacted, that no Ship or Veſſel upon which the Tonnage Duty by this Act impoſed ſhall be due and payable, ſhall be permitted to be cleared Inwards in any Port of Great Britain, or the Iſlands of Guernſey, Jerſey, Alderney, Sark, or Mann, unleſs the ſaid Tonnage Duty ſhall have been firſt duly paid to the proper Officers of the Cuſtoms appointed to receive the ſame, or the Commiſſioners of the Cuſtoms ſhall otherwiſe direct; and that the Tonnage of every Ship or Veſſel ſhall be computed and taken, for the Purpoſe of aſcertaining the ſaid Duties according to the Regiſter thereof, under the Proviſions of an Act, paſſed in the 26th Year of His preſent Majeſty's Reign, intituled, *An Act for the further Increaſe and Encouragement of Shipping and Navigation*; and in caſe of any Diſpute or Doubt relative thereto, the ſame ſhall be aſcertained by Admeaſure- Ships not to be permitted to clear inwards until the Duties are paid. How the Tonnage ſhall be computed.

45 Geo. III, c. 10. —QUARANTINE.

ment, in the Mode and Manner preſcribed in the ſaid laſt-mentioned Act.

Ship Owners to recover Duties of the Importers,

6. And be it further enacted, That it ſhall and may be lawful for the Owner or Owners of any Ship or Veſſel, in reſpect of which any of the Duties impoſed by this Act ſhall have been paid, to demand and recover from the reſpective Importers, Proprietors, or Conſignees of any Goods or Merchandize brought or imported in any ſuch Ship or Veſſel, ſuch Sum or Sums of Money as ſhall be equal to the juſt and reaſonable Contribution which the Proportion of Tonnage that ſuch Goods or Merchandize bear to the Tonnage Burthen of the Ship ſhall require, and no more; ſuch Proportion of Tonnage to be aſcertained according to the Uſage of Merchants in like Caſes.

Duties to be carried to Conſolidated Fund of Great Britain.

7. And be it further enacted, That the Monies ariſing from the Duties hereby granted ſhall be paid into the Receipt of His Majeſty's Exchequer, and carried to and made part of the Conſolidated Fund of Great Britain; and that in the Office of the Auditor of the Receipt of His Majeſty's Exchequer there ſhall be provided and kept a Book or Books, in which all the Monies ariſing from the ſaid Duties and paid into the ſaid Receipt ſhall be entered ſeparate and apart from all other Monies paid or payable to His Majeſty, His Heirs or Succeſſors, upon any Account whatſoever.

Application of the Duties.

8. And be it further enacted, That the Money ſo raiſed, levied, collected, and paid, ſhall be applied in the firſt Place to defray the annual Expences of the ſaid Floating Lazaret, and Land Lazaret, and all other annual Expences which ſhall be incurred in the Execution of this Act; and in the next Place to make good any Money that ſhall have been iſſued for purchaſing the Lands on Chetney Hill, and for the erecting of the ſaid Lazaret, and for providing the neceſſary and convenient Accommodations thereto belonging, in Manner herein-before mentioned, and to no other Purpoſe whatſoever.

39 & 40 G. III, c. 80. &c. repealed, except as to Arrears of Duty, &c.

IX. And whereas it is is expedient that the ſaid herein-before recited Act, paſſed in the 39th and 40th Years of the Reign of His preſent Majeſty, and every other Act or Acts heretofore paſſed concerning Quarantine, together with ſuch further Proviſions as are found to be neceſſary to be made in reſpect thereof, ſhould be reduced into One Act; be it therefore enacted, That the ſaid Act ſo paſſed in the 39th and 40th Years of the Reign of His ſaid preſent Majeſty, as

aforeſaid, be repealed, and that every other Act or Acts heretofore paſſed, in ſo far as the ſame do or may be deemed or conſtrued to relate to the Performance of Quarantine, ſhall be and the ſame are hereby repealed; ſave and except ſo much of the ſaid Act paſſed in the 39th and 40th Years of the reign of His preſent Majeſty as relates to the Repeal of former Acts, and to the Payment and recovering of any Duties impoſed by the ſaid Act, which ſhall be due and unpaid at the Time of paſſing this Act, and alſo ſave and except as to any Offence or Offences done or committed before the paſſing of this Act, by any Perſon or Perſons, againſt any Law concerning Quarantine; and as to any Fine, Penalty, Forfeiture, or Puniſhment, Fines, Penalties, Forfeitures, or Puniſhments, to which any ſuch Perſon or Perſons may be liable by reaſon of the ſame; and alſo as to any Action, Suit, Proſecution, or other Proceeding brought or commenced, or which ſhall hereafter be brought or commenced, for or on account of any ſuch Offence or Offences ſo done or committed as aforeſaid. 45 GEO. III, c. 10. —QUARANTINE.

10. And be it further enacted, That all Ships and Veſſels, as well His Majeſty's Ships of War as all others, coming from or having touched at any Place from whence His Majeſty, His Heirs or Succeſſors, by and with the Advice of His, or their Privy Council, ſhall have adjudged and declared it probable that the Plague, or any other infectious Diſeaſe or Diſtemper, highly dangerous to the Health of His Majeſty's Subjects, may be brought; and all Ships, Veſſels, and Boats receiving any Perſon, Goods, Wares, and Merchandize, Packets, Packages, Baggage, Wearing Apparel, Books, Letters, or any other Articles whatever, from or out of any Ships or Veſſels ſo coming from or having touched at ſuch infected Place as aforeſaid, whether ſuch Perſons, Goods, Wares, and Merchandize, Packets, Packages, Baggage, Wearing Apparel, Books, Letters, or other Articles, ſhall have come or been brought in ſuch Ships or Veſſels, or ſuch Perſons ſhall have gone, or Articles have been put on board the ſame, either before or after the Arrival of ſuch Ships or Veſſels at any Port or Place in Great Britain, or the Iſlands of Guernſey, Jerſey, Alderney, Sark, or Man, and whether ſuch Ships or Veſſels were or were not bound to any Port or Place in Great Britain or the Iſlands aforſaid; and all Perſons, Goods, Wares, and Merchandize, Packets, Packages, What Ships ſhall be liable to Quarantine.

45 GEO. III, C. 10 —QUARANTINE.

Baggage, Wearing Apparel, Books, Letters, or any other Articles whatever, on board of any ſuch Ships or Veſſels ſo coming from or having touched at ſuch infected Place as aforeſaid, or on board of any ſuch Receiving Ships, Veſſels or Boats as aforeſaid, ſhall be and be conſidered to be liable to Quarantine within the Meaning of this Act, and of any Order or Orders which ſhall be made by His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or their Privy Council concerning Quarantine, and the Prevention of Infection from the Time of the Departure of ſuch Ships or Veſſels from ſuch infected place as aforeſaid, or from the Time when ſuch Perſons, Goods, Wares, Merchandize, Packets, Packages, Baggage, Wearing Apparel, Books, Letters, or other Articles ſhall have been received on board reſpectively; and all ſuch Ships, Veſſels, and Boats, as aforeſaid, and all Perſons, (as well Pilots as others), Goods, Wares, and Merchandize, and other Articles as aforeſaid, whether coming or brought in ſuch Ships, Veſſels, or Boats, from ſuch infected place as aforeſaid, or going, or being put on board the ſame, either before or after the Arrival of ſuch Ships, Veſſels, or Boats, at any Port or Place in Great Britain, or the Iſlands aforeſaid; and all Perſons, Goods, Wares, and Merchandize, and other Articles as aforeſaid, on board any ſuch Receiving Ship, Veſſel, or Boat, as aforeſaid, ſhall, upon their Arrival at any ſuch Port or Place, be obliged to perform Quarantine, in ſuch Place or Places, for ſuch Time and in ſuch Manner as ſhall from Time to Time be directed by His Majeſty, His Heirs or Succeſſors, by His or their Order or Orders in Council, notified by Proclamation, or publiſhed in the London Gazette; and that until ſuch Ships, Veſſels, and Boats, Perſons, Goods, Wares, and Merchandize, and other Articles as aforeſaid, ſhall have reſpectively performed and ſhall be duly diſcharged from ſuch Quarantine, no ſuch Perſon, Goods, Wares, or Merchandize, or other Articles as aforeſaid, or any of them, ſhall, either before or after the Arrival of ſuch Ships, Veſſels, or Boats, at any Port or Place in Great Britain, or the iſlands aforeſaid, come or be brought on Shore, or go and be put on board any other Ship, Veſſel, or Boat, in order to come or be brought on Shore, in any ſuch Port or Place, although ſuch Ships or Veſſels ſo coming from ſuch infected Place as aforeſaid may not be bound to any Port or Place in Great

Britain, or the Iſlands aforeſaid, unleſs in ſuch Manner and in ſuch Caſes, and by ſuch Licence as ſhall be directed or permitted by ſuch Order or Orders made by His Majeſty, His Heirs or Succeſſors, in Council as aforeſaid; and all ſuch Ships, Veſſels, and Boats, whether coming from ſuch infected Place as aforeſaid, or being otherwiſe liable to Quarantine as aforeſaid, and all Perſons, (as well Pilots as others), Goods, Wares, and Merchandize, and other Articles as aforeſaid, whether coming or brought in ſuch Ships, Veſſels, or Boats, or going or being put on board the ſame, either before or after the Arrival of ſuch Ships, Veſſels, or Boats, at any Port or Place in Great Britain, or the Iſlands aforeſaid, and although ſuch Ships, Veſſels, or Boats, ſhall not be bound to any Port or Place in Great Britain, or the Iſlands aforeſaid; and all Commanders, Maſters, or other Perſons having the Charge or Command of any ſuch Ships, Veſſels, or Boats, whether coming from any Infected Place, or being otherwiſe liable to Quarantine, as aforeſaid, ſhall be ſubject to all the Proviſions, Rules, Regulations, and Reſtrictions contained in this Act, or in any Order or Orders which ſhall be made by His Majeſty, His Heirs and Succeſſors, in Council as aforeſaid, concerning Quarantine and the Prevention of Infection, and to all the Pains, Penalties, Forfeitures, and Puniſhments contained in this Act, for any Breach or Diſobedience thereof, or of any Order or Orders of His Majeſty in Council, made under the Authority thereof. 45 Geo. III. c. 10. —QUARANTINE.

11. And whereas certain Sorts of Goods and Merchandize are more eſpecially liable to retain Infection, and may be brought from Places infected into other Countries, and from thence imported into Great Britain, or the iſlands aforeſaid; be it enacted, That all ſuch Goods and Merchandize as ſhall be particulary ſpecified for that Purpoſe in any Order or Orders made by his Majeſty, His Heirs or Succeſſors, in Council, concerning Quarantine and the Prevention of Infection as aforeſaid, which ſhall ſhall be brought or imported into any Port or Place in Great Britain, or the Iſlands aforeſaid, from any Foreign Country or Place, in any Ship or Veſſel whatever, and the Ships or Veſſels in which the ſame ſhall be brought, and alſo all Ships and Veſſels which ſhall arrive from any Port or Place whatever under any alarming or ſuſpicious Circumſtances as to Infection, ſhall be ſubject and liable to ſuch Regulations and Reſtrictions as Goods ſpecified in any Order of Council, and Ships, ſhall be made ſubject to Quarantine.

45 GEO. III. c. 10. —QUARANTINE.

shall be made by such Order or Orders of His Majesty, His Heirs or Successors, in Council as aforesaid, respecting the same.

The Privy Council may make such Orders as they shall think necessary upon Emergencies.

12. And be it further enacted, That it shall and may be lawful for the Lords and others of His Majesty's Privy Council, or any Three or more of them, to make such Order as they shall see necessary and expedient upon any unforeseen Emergency, or in any particular Case or Cases with respect to any Ship or Ships, Vessel or Vessels, arriving and having any infectious Disease or Distemper on board, or on board of which any infectious Disease or Distemper may have appeared in the Course of the Voyage, or arriving under any other alarming or suspicious Circumstances as to Infection, although such Ship or Ships, Vessel or Vessels, shall not have come from any Place or Places from which His Majesty, His Heirs or Successors, by and with the Advice of His or their Privy Council, may have adjudged and declared it probable that the Plague, or any such infectious Disease or Distemper may be brought, and also with respect to the Persons, Goods, Wares, and Merchandize, and other Articles as aforesaid, on board the same, and in case of any infectious Disease or Distemper appearing or breaking out in Great Britain or the islands aforesaid, to make such Orders, and give such Directions, in order to cut off all Communication between any Persons infected with any such Disease or Distemper and the rest of His Majesty's Subjects, as shall appear to the said Lords or others of His Majesty's Privy Council, or any Three or more of them, to be necessary and expedient for that Purpose, and likewise to make such Orders as they shall see fit for shortening the time of Quarantine to be performed by particular Ships or Vessels, or particular Persons, Goods, Wares, Merchandize, or any other Articles, or for wholly releasing particular Ships or Vessels, or particular Persons, Goods, Wares, Merchandize, or other Articles, from Quarantine, absolutely or conditionally, and generally to mitigate the strict Performance of Quarantine in particular Cases, as special Circumstances shall appear in their Judgment to require; and all such Orders so made by the Lords or others of the Privy Council, or any Three or more of them as aforesaid, shall be as good, valid, and effectual, to all Intents and Purposes, (as well with respect to the Commander, Master, or other Person having the Charge of any

ſuch Ship or Veſſel, and all other Perſons on board the ſame, as with reſpect to any other Perſons having any intercourſe or Communication with them, and to the Penalties, Forfeitures, and Puniſhments, to which they may reſpectively become liable), as any Order or Orders made by His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or their Privy Council, concerning Quarantine, and the Prevention of Infection as aforeſaid, and notified by Proclamation or publiſhed in the London Gazette. 45 Geo. III. c. 80. —QUARANTINE.

13. And be it further enacted, That if the Plague, or ſuch other infectious Diſeaſe or Diſtemper as aforeſaid, ſhall appear on board any Ship or Veſſel within the Streights of Gibraltar, the Commander, Maſter, or other Perſon having Charge thereof, ſhall immediately proceed to ſome one of the Foreign Lazarets, and there, perform Quarantine, until ſuch time as the Land Lazaret, to be erected as aforeſaid, ſhall, by His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or their Privy Council, and by Order of the ſame, notified by Proclamation, or publiſhed in the London Gazette, have been declared to be fit for the due Performance of Quarantine therein; but if ſuch Plague, or other ſuch infectious Diſeaſe or Diſtemper as aforeſaid, ſhall appear on board any Ship or Veſſel without the Streights of Gibraltar, then the Commander, Maſter, or other Perſon having the charge or Command thereof, ſhall (unleſs ſuch Land Lazaret ſhall have been ſo declared to be fit for the due Performance of Quarantine therein) immediately proceed to the Harbour of Saint Helen's, Tean and North Withel, being Two of the Iſlands commonly called the Iſlands of Scilly, or to ſuch other Place as His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or their Privy Council, ſhall from Time to Time direct and appoint; where being arrived he ſhall make known his Caſe to ſome Officer of the Cuſtoms there, who ſhall immediately acquaint the Governor, Deputy Governor, or other principal Magiſtrate thereof, and alſo the Principal Officer of the Cuſtoms at ſome Port in England near thereunto; and the ſaid principal Officer of the Cuſtoms at ſuch near Port in England ſhall, with all poſſible Speed, ſend Intelligence thereof to the Commiſſioners of the Cuſtoms in the Port of London; and the ſaid Governor, Deputy Governor, or other principal Magiſtrate ſhall, in like Manner, with all poſſible Speed, ſend Intelligence

Regulations for Veſſels in which Infections ſhall appear, within or without the Streights of Gibraltar, previous to the Lazaret at Chetney Hill being completed.

45 GEO. III. C. 10. —QUAR. &c. TINE.

thereof to the Privy Council, to the End that ſuch Meaſures may be taken for the Comfort and Support of the Crew and Paſſengers on board ſuch Ship ſo infected, and ſuch Precautions uſed to prevent the ſpreading of the Infection, as the Caſe ſhall require: and the ſaid Ship or Veſſel ſhall there remain until Directions ſhall be given relative thereto by the Lords or others of His Majeſty's Privy Council, or any Three or more of them; nor ſhall any of the Crew or Paſſengers on board thereof go on Shore; but in caſe the ſaid Commander, Maſter, or other Perſon having charge of the ſaid Ship or Veſſel ſo infected, ſhall not be able to make the ſaid Iſlands of Scilly, or other Place ſo appointed by his Majeſty as aforeſaid, or ſhall be forced by Streſs of Weather or otherwiſe to go up either of the Channels, it ſhall not be lawful for him to enter with ſuch Ship or Veſſel into any other Port or Place in Great Britain, or the Iſlands of Guernſey, Jerſey, Alderney, Sark, or Man, but he ſhall remain in ſome open Road till he receives Directions relative thereto from the Privy Council, and he ſhall uſe every neceſſary Means in his power to prevent any of the Ship's Company or Paſſengers from going out of his Ship, and to avoid all intercourſe with other Ships, Veſſels, or Perſons; and ſuch Ship's Company or Paſſengers ſhall, until ſuch Commander, Maſter, or other Perſon ſhall have received ſuch Directions, remain in ſuch Ship, and ſhall avoid all intercourſe with other Ships, Veſſels, or Perſons; and ſuch Maſter, and every other Perſon on board ſuch Ship or Veſſel ſhall obey ſuch Directions as he ſhall receive from the Lords or others of His Majeſty's Privy Council, or any Three or more of them as aforeſaid; and the ſaid Commander, Maſter, or any other Perſon on board ſuch Ship, or Veſſel as aforeſaid, who ſhall not act conformably to the Proviſions and Regulations herein directed, or ſhall act in Diſobedience to ſuch Directions as ſhall be received on board ſuch Ship or Veſſel from the Lords or others of the Privy Council, or any Three or more of them as aforeſaid, ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as in caſes of Felony, without Benefit of Clergy.

Maſters of Ships to make Signals on meeting other Ships.

14. And be it further enacted, That every Commander, Maſter, or other Perſon having the Charge of any Ship or Veſſel liable to the Performance of Quarantine, ſhall be and is hereby required at all Times when ſuch Ship or Veſſel ſhall meet with any other Ship or Veſſel at Sea, or ſhall be

within Four Leagues of the Coaſt of Great Britain or Ireland, or the Iſlands of Guernſey, Jerſey, Alderney, Sark, or Man, to hoiſt a Signal to denote that his Ship or Veſſel is liable to the Performance of Quarantine, which Signal ſhall be, in the Day Time, if the ſaid ſhip or Veſſel ſhall have a clean Bill of Health, a large yellow Flag of Six Breadths of Bunting at the Maintopmaſt Head; and if ſuch Ship or Veſſel ſhall not have a clean Bill of Health, then a like yellow Flag, with a circular Mark or Ball entirely Black in the Middle thereof, whoſe Diameter ſhall be equal to Two Breadths of Bunting; and in the Night Time the Signal ſhall in both Caſes be a large Signal Lanthorn, with a Light therein (ſuch as is commonly uſed on board His Majeſty's Ships of War), at the ſame Maſt-head; and ſuch Commander, Maſter, or other Perſon, ſhall keep ſuch Signals reſpectively, as the Caſe ſhall be, hoiſted during ſuch Time, as the ſaid Ship ſhall continue within Sight of ſuch other Ship or Veſſel, or within Four Leagues of the ſaid Coaſts or Iſlands, and while ſo in Sight, or within ſuch Diſtance, until ſuch Ship or Veſſel ſo liable to Quarantine as aforeſaid ſhall have arrived at the Port or Place where it is to perform Quarantine, and until it ſhall have been legally diſcharged from the Performance thereof; on Failure whereof ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel ſo liable to the Performance of Quarantine, ſhall forfeit and pay for every ſuch Offence the Sum of Two hundred Pounds.

45 GEO. III, c. 10. —QUARANTINE. at Sea, or being within Four Leagues of the United Kingdom or Guernſey, &c. on Penalty of 200l.

15. AND be it further enacted, That if any Commander, Maſter, or other Perſon having the Charge or Command of any Ship or Veſſel, and knowing that the ſame is not liable to the Performance of Quarantine, ſhall hoiſt ſuch Signals as aforeſaid, or either of them, by Day or Night reſpectively, ſuch Commander, Maſter, or other Perſon as aforeſaid, ſhall forfeit and pay the Sum of Two hundred Pounds.

Penalty of 200l. on Perſons hoiſting Signals when not liable.

16. AND be it further enacted, That, from and after the 1ſt day of June 1806, as to all Ships or Veſſels arriving from any Places beyond the Cape of Good Hope, or Cape Horn in South America; and after the 1ſt day of Auguſt 1805, as to all Ships or Veſſels arriving from any Parts of Africa or America not beyond theſe Capes, and from the Weſt Indies and Mediterranean; and from and after the 1ſt day of May 1805, as to all Ships and Veſſels arriving from any other Places, every Commander, Maſter, or other Perſon having

Veſſels from foreign Parts, to inform Pilots of the Places where loaded, &c. on Penalty of 200l.

45 GEO. III, c. 10. —QUARANTINE.

the Charge of any Ship or Veſſel coming from foreign Parts, ſhall give to the Pilot who ſhall go on board ſuch Ship or Veſſel a written Paper, containing a true Account of the Names of the Place and Country at which ſuch Ship or Veſſel ſhall have loaded, and alſo of all the Places at which any ſuch Ship or Veſſel ſhall have touched on the homeward Voyage, on Pain of forfeiting the Sum of Two hundred Pounds for any Neglect or Refuſal to give ſuch Paper, or for any falſe Repreſentation or wilful Omiſſion therein; and if by any Proclamation or Order of His Majeſty in Council, made after the Departure of any ſuch Ship or Veſſel from Great Britain, and then in force, Ships and Veſſels coming from any Place mentioned in any ſuch Paper ſhall be liable to the Performance of Quarantine, ſuch Pilot ſhall immediately give Notice thereof to the Commander or other Perſon aforeſaid of ſuch Ship or Veſſel, on Pain of forfeiting the Sum of Fifty Pounds for any Neglect therein; and ſuch Commander or other Perſon ſhall thereupon hoiſt a proper Signal according to the Proviſions of this Act, and under the Penalties in this Act contained, for any Neglect or Refuſal in reſpect of hoiſting ſuch Signals.

Penalty of 100l. on Pilots bringing Ships liable to Quarantine into Places not appointed for their Reception.

17. AND be it further enacted, That in caſe any Pilot ſhall bring or conduct, or cauſe to be brought or conducted, any Ship or Veſſel liable to the Performance of Quarantine, into any Place which is not, or which ſhall not be ſpecially appointed for the Reception of Ships and Veſſels ſo liable after receiving ſuch Paper as aforeſaid, whereby it ſhall have been made appear that ſuch Ship or Veſſel was liable to the Performance of Quarantine, or without requiring and receiving ſuch Paper as aforeſaid of and from every ſuch Commander, Maſter, or other Perſon having the Charge of any Ship or Veſſel coming from foreign Parts, unleſs compelled by Streſs of Weather, adverſe Winds, or Accidents of the Seas, ſuch Pilots ſhall for each and every ſuch Offence forfeit and pay the Sum of One hundred Pounds.

For better aſcertaining whether Ships be actually infected, or the Perſons

18. And, to the End that it may be the better known whether any Ship or Veſſel be actually infected with the Plague, or other infectious Diſeaſe or Diſtemper as aforeſaid, or whether ſuch Ship or Veſſel, or the Mariners or Paſſengers coming, or the Cargo imported in the ſame, are liable to any Orders touching Quarantine; be it further enacted, That when any Country or Place ſhall be known to be, or

ſuſpected to be infected with the Plague, or other ſuch infectious Diſeaſe or Diſtemper as aforeſaid, or when any Order or Orders ſhall be made by His Majeſty in Council concerning Quarantine, and the Prevention of Infection as aforeſaid, then and in ſuch Caſe, as often as any Ship or Veſſel ſhall attempt to enter into any Port or Place in Great Britain, or the Iſles of Guernſey, Jerſey, Alderney, Sark, or Man, whether ſuch Port ſhall have been appointed for the Performance of Quarantine or not, the Superintendant of Quarantine, or his Aſſiſtant, if there ſhall be be ſuch Superintendant or Aſſiſtant at ſuch Port or Place, or if not, the principal Officer of His Majeſty's Cuſtoms at ſuch Port or Place, or ſuch Officer of the Cuſtoms as ſhall be authorized by the Commiſſioners of the Cuſtoms, or any Four or more of them, to act in that Behalf, ſhall go off to ſuch Ship or Veſſel, and ſhall, at a convenient Diſtance from ſuch Ship or Veſſel, demand of the Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, and ſuch Commander Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, ſhall upon ſuch Demand give a true Anſwer in Writing or otherwiſe, and upon Oath or not upon Oath, according as he ſhall by ſuch Superintendant or his Aſſiſtant, or other Officer of the Cuſtoms authorized as aforeſaid, be required, to all ſuch Queſtions or Interrogatories as ſhall be put to him, by virtue and in purſuance of ſuch Regulations and Directions as His Majeſty, by Order in Council, ſhall be pleaſed to preſcribe; and in caſe ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel ſhall, upon ſuch Demand made as aforeſaid, refuſe to make a true Diſcovery in any of the Particulars concerning which he ſhall be interrogated in Manner aforeſaid, or in caſe he ſhall not be required to anſwer ſuch Queſtions or Interrogatories upon Oath, ſhall give a falſe Anſwer to any ſuch Queſtion or Interrogatory as aforeſaid, ſuch Commander, Maſter, or other Perſon having Charge of ſuch ſhip or Veſſel, for every ſuch Offence ſhall forfeit and pay the Sum of Two Hundred Pounds.

45 GEO. III. c. 10 —QUARANTINE.

on board liable to Orders touching Quarantine.

19. And be it further enacted, That in caſe it ſhall appear upon ſuch Examination or otherwiſe, that ſuch Ship or Veſſel is under ſuch Circumſtances as ſhall render it liable to Perform Quarantine, and that the Port or Place where it ſo arrives, or at which it attempts to enter as aforeſaid, is not the Port or Place where it ought to perform Quarantine,

Ships ſubject to Quarantine arriving at any Port than that at which it

45 GEO. III. c. 10. —QUARANTINE.

in ſuch caſe it ſhall and may be lawful to and for the Officers of any of His Majeſty's Ships of War, or of any of his Majeſty's Forts or Garriſons, and all other his Majeſty's Officers, upon Notice thereof given to them or any of them reſpectively, and to and for any other Perſon or Perſons whom they ſhall call to their Aid and Aſſiſtance; and ſuch officers and other Perſons are hereby required to oblige ſuch Ship or Veſſel to go and repair to ſuch Place as hath been or ſhall be appointed for Performance of Quarantine, and to uſe all neceſſary Means for that Purpoſe, either by firing of Guns upon ſuch Ship or Veſſel, or by any other Kind of neceſſary Force whatſoever; and in caſe any ſuch Ship or Veſſel ſhall come from or ſhall have touched at any Place infected by the Plague, or ſuch other infectious Diſeaſe or Diſtemper as aforeſaid, or ſhall have any Perſon on board actually infected with the Plague, or ſuch other infectious Diſeaſe or Diſtemper as aforeſaid, and the Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, knowing that the Place from whence he came, or at which he had touched as aforeſaid, was infected with the Plague, or ſuch other infectious Diſeaſe or Diſtemper, or knowing ſome Perſon on board to be actually infected with the Plague, or ſuch other infectious Diſeaſe or Diſtemper as aforeſaid, ſhall refuſe or omit to diſcloſe the ſame upon ſuch Examination as aforeſaid, or ſhall wilfully omit to hoiſt the Signal herein-before directed, to denote that his Ship or Veſſel is liable to the Performance of Quarantine, at the Times and on the Occaſions herein directed with reſpect to the ſame, ſuch Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel, ſhall be adjudged guilty of Felony, and ſhall ſuffer Death as in Caſes of Felony without Benefit of Clergy.

ought to be performed may be forced to repair the appointed Place.

Maſters of Veſſels that have touched at infected Places, &c. omitting to diſcloſe the ſame, or omitting to hoiſt the preſcribed Signal, ſhall ſuffer Death

Commanders to deliver up Bill of Health, Manifeſts, and Log Books, to the Superintendant of Quarantine on Penalty of 100l.

20. AND be it further enacted, That every Commander, Maſter, or other Perſon having Charge of any Ship or Veſſel which ſhall be ordered to perform Quarantine as aforeſaid, ſhall forthwith, after his Arrival at the Place appointed for the Performance of his Quarantine, deliver on demand, to the Superintendant of Quarantine or his Aſſiſtant, or other Officer of the Cuſtoms authorized as aforeſaid to act in that Behalf, and which Superintendant, Aſſiſtant, or other Officer as aforeſaid, is hereby required to make ſuch Demand, his Bill of Health and Manifeſt, together with his Log Book and Journal, under Pain of forfeiting the Sum of One hundred Pounds, if he ſhall wilfully refuſe or neglect ſo to do.

21. And be it further enacted, That if any Commander, Maſter, or other Perſon having Charge of any Ship or Veſſel liable to perform Quarantine, and on board of which the Plague, or other ſuch infectious Diſeaſe or Diſtemper ſhall not then have appeared ſhall himſelf quit, or ſhall knowingly permit or ſuffer any Seamen or Paſſenger coming in ſuch Ship or Veſſel to quit ſuch Ship or Veſſel by going on Shore, or by going on board any other Ship, Boat, or Veſſel, before ſuch Quarantine ſhall be fully performed, unleſs in ſuch Caſes and by ſuch proper Licence as ſhall be directed and granted, and by virtue of ſuch Order or Orders to be made concerning Quarantine and the Prevention of Infection as aforeſaid; or in caſe any Commander, Maſter, or other Perſon having Charge of ſuch Ship or Veſſel ſhall not, within a convenient Time after due Notice given for that Purpoſe, cauſe ſuch Ship or Veſſel, and the Lading thereof, to be conveyed into the Place or Places appointed for ſuch Ship, Veſſel, and Lading to perform their Quarantine reſpectively, then and in every ſuch Caſe every ſuch Commander, Maſter, or other Perſon as aforeſaid, for every ſuch Offence ſhall forfeit and pay the Sum of Five hundred Pounds; and if any Perſon coming in any Ship or Veſſel liable to perform Quarantine (or any Pilot or other Perſon going on board the ſame, either before or after the arrival of ſuch Ship or Veſſel at any Port or Place in Great Britain or the Iſlands aforeſaid) ſhall, either before or after ſuch arrival, quit ſuch Ship or Veſſel by going on Shore in any Port or Place in Great Britain or the Iſlands aforeſaid, or by going on board any other Ship, Veſſel, or Boat, with Intent to go on Shore as aforeſaid, before ſuch Ship or Veſſel, ſo liable to Quarantine as aforeſaid, ſhall be regularly diſcharged from the Performance thereof, it ſhall and may be lawful for all Perſons whatſoever, by any Kind of neceſſary Force, to compel ſuch Pilot or other Perſon ſo quitting ſuch Ship or Veſſel ſo liable to Quarantine, to return on board the ſame; and every ſuch Pilot or other Perſon ſo quitting ſuch Ship or Veſſel ſo liable to Quarantine, ſhall for every ſuch Offence ſuffer Impriſonment for the Space of Six Months, and ſhall forfeit and pay the Sum of Two hundred Pounds.

45 GEO. III, c. 10. —QUARANTINE. Penalty on Maſters, &c. quitting Veſſels, or permitting Perſons to quit them, or not conveying Ships to the appointed Places, and on Perſons coming in ſuch Veſſels, or going on board, for quitting them before diſcharged.

22. And be it further enacted, That when any Ship or Veſſel which has performed Quarantine in any foreign Lazaret ſhall arrive in any of the Ports of Great Britain, or No Goods to be landed from Veſſels having per-

45 GEO. III, c. 10. —QUARANTINE.

the Isles of Guernsey, Jersey, Alderney, Sark, or Man, with a clean Bill of Health, no Goods or Merchandize shall be permitted to be landed or unshipped, unloaded or moved, in order to be landed out of such Ship or Vessel; but the Commander, Master, or other Person having the Charge or Command of such Ship or Vessel, shall immediately upon his Arrival give Notice thereof, and of the foreign Port or Ports in which such Ship or Vessel hath performed Quarantine, to the principal Officer of His Majesty's Customs at the Port where he shall arrive, or at the Port nearest thereto, in order that the same may be forthwith laid before His Majesty's Privy Council; and if the Commander, Master, or other Person as aforesaid, or any Person whatsoever, shall land, or shall unship, unload, or move, in order to land any Goods or Merchandize out of the said Ship or Vessel, before an Order of His Majesty's Privy Council shall be made, giving Directions therein, or otherwise than shall be directed in the said Order, every such Person shall for every such Offence forfeit and pay the Sum of Two hundred Pounds.

Performed Quarantine in a foreign Lazaret, without Notice to the Officer of the Customs, nor fore Directions from the Privy Council, on Penalty of 200l.

For punishing Disobedience or refractory Behaviour in Persons under or liable to Quarantine, or Persons having Intercourse with them.

23. And whereas Disobedience or refractory Behaviour in Persons under Quarantine, or liable to the Performance of Quarantine, or in other Persons who may have had any Intercourse or Communication with them, may be attended with very great Danger to His Majesty's Subjects; be it further enacted, That all Persons liable to perform Quarantine, and all Persons having had any Intercourse or Communication with them, whether in Ships or in a Lazaret, or elsewhere, shall be subject, during the said Quarantine, or during the Time they shall be liable to Quarantine, to such Orders as they shall receive from the Superintendant of Quarantine or his Assistant, or from the principal Officer of the Customs at any Port or Place where there is no such Superintendant or Assistant, or from any other Officer of the Customs authorized as aforesaid to act in that Behalf; and the said Officers are hereby empowered and required to enforce all necessary Obedience to the said Orders, and in case of Necessity to call in others to their Assistance, and all Persons so called in are hereby required to assist accordingly; and such Officers shall, and they are hereby empowered and required, to compel all Persons liable to perform Quarantine as aforesaid, and Persons having had any Intercourse or Communication with them, to repair to such Lazaret, Ship

Veſſel, or Place, and to cauſe all Goods, Wares, and Merchandize, and other Articles comprized within any ſuch Orders to be made as laſt aforeſaid, to be conveyed to ſuch Lazaret, Ship, Veſſel, or Place duly appointed in that Behalf, in ſuch Manner and according to ſuch Directions as ſhall be made by Order of His Majeſty in Council as aforeſaid, or of the Lords and others of the Privy Council, or of any three or more of them; and if any Perſon or Perſons liable to perform Quarantine as aforeſaid, or any Perſon or Perſons having had any Intercourſe or Communication with him, her, or them, ſhall wilfully refuſe or neglect to repair forthwith, when required and directed ſo to do by ſuch Officer as aforeſaid, to the ſaid Lazaret, Ship, Veſſel, or Place, duly appointed in that Behalf, or having been placed in the ſaid Lazaret, Ship, Veſſel, or Place, ſhall eſcape or attempt to eſcape out of the ſame before Quarantine duly performed, it ſhall and may be lawful to and for the ſaid Quarantine Officers, and alſo the Watchmen and other Perſons appointed to ſee Quarantine performed, and each of them, and they are hereby reſpectively required, by ſuch neceſſary Force as the Caſe ſhall require, to compel every ſuch Perſon ſo refuſing or neglecting as aforeſaid, and every ſuch Perſon ſo eſcaping or attempting to eſcape as aforeſaid, to repair or return to ſuch Lazaret, Ship, Veſſel, or Place ſo appointed as aforeſaid; and every Perſon ſo refuſing or neglecting to repair forthwith, as aforeſaid, to the ſaid Lazaret, Ship, Veſſel, or Place, and alſo every Perſon actually eſcaping as aforeſaid, ſhall be adjudged guilty of Felony, and ſuffer Death as in Caſes of Felony, without Benefit of Clergy. 45 GEO. III, c. 10. —QUARANTINE.

24. And be it further enacted, That it ſhall be lawful for any Conſtable, Headborough, Tythingman, or other Peace Officer, or any other Perſon, to ſeize and apprehend any Perſon that ſhall, contrary to the Proviſions of this Act, have quitted or come on Shore from any Ship or Veſſel liable to perform Quarantine, or who ſhall have eſcaped from or quitted any Ship or Veſſel under Quarantine, or from any Lazaret, Ship, Veſſel, or Place appointed in that Behalf, for the Purpoſe of carrying ſuch Perſon before any Juſtice of the Peace or Magiſtrate, and it ſhall be lawful for any ſuch Juſtice of the Peace or Magiſtrate to grant his Warrant for the apprehending and conveying of any ſuch Perſon to the Ship or Veſſel from which he or ſhe ſhall have come on Perſons quitting Ships liable to perform Quarantine &c. may be ſeized.

45 GEO. III. c. 10. —QUARANTINE.

Shore, or to any Ship or Veſſel performing Quarantine, or Lazaret, from which he or ſhe ſhall have eſcaped, or for the confining of any ſuch Perſon in any ſuch Place of ſafe Cuſtody, (not being any public Gaol) and under ſuch Reſtrictions as to having any Communication with any other Perſons, as may, in the Diſcretion of any Juſtice of the Peace or Magiſtrate (calling to his Aid, if he ſhall ſee fit, any medical Perſon), appear to be proper, until ſuch Perſon can be ſafely and ſecurely conveyed to ſome Place appointed for the Performance of Quarantine, or until Directions can be obtained from the Privy Council, as to the Diſpoſal of any ſuch Perſon, and to make any further Order or grant any further Warrant that may be neceſſary in that Behalf.

Orders in Council for ſending afloat to perform Quarantine Perſons who had had Intercourſe, with a Veſſel from which Danger of Infection was apprehended, to be valid, and the Adviſers, &c. indemnified.

25. And whereas Orders have been given by the Lords of His Majeſty's Privy Council for Perſons on Shore, who had Intercourſe with the Crew and Paſſengers of a Veſſel coming from a Place from whence it was judged that there was danger of Infection being brought, to be ſent afloat for the Performance of Quarantine, in like Manner with ſuch Crew and Paſſengers; be it enacted, That ſuch Orders ſo iſſued as aforeſaid by the Lords of His Majeſty's Privy Council for the Prevention of Infection, ſhall be taken and conſidered to have been, and are hereby declared to be good and valid in Law; and all Perſons who may have been concerned in adviſing, iſſuing, or carrying into Execution the ſaid Orders or any of them, ſhall be and are hereby indemnified for the ſame, and ſhall be and are hereby freed and diſcharged from all Actions, Suits, or other Proceedings, which have been or ſhall be brought and commenced againſt them, for or on account or by reaſon of the ſaid Orders, or any of them, or of any other Matter or Thing done in purſuance thereof.

Penalty on Perſons embezzling Goods performing Quarantine neglecting or deſerting their Duty, or permitting Perſons, Ships, &c. to de-

26. And be it further enacted, That if any Officer of His Majeſty's Cuſtoms, or any other Officer or Perſon whatſoever to whom it doth or ſhall appertain to execute any Order or Orders made or to be made concerning Quarantine, or the Prevention of Infection, and notified as aforeſaid, or to ſee the ſame put in Execution, ſhall knowingly and wilfully embezzle any Goods or Articles performing Quarantine, or be guilty of any other wilful Breach or Neglect of his Duty in reſpect of the Ships, Perſons, Goods, or Articles performing Quarantine, every ſuch Officer and Perſon

ſo offending ſhall forfeit ſuch Office or Employment as he may be poſſeſſed of, and ſhall become from thenceforth incapable to hold or enjoy the ſame, or to take a new Grant thereof; and every ſuch Officer and Perſon ſhall forfeit and pay the Sum of One hundred Pounds; and if any ſuch Officer or Perſon ſhall deſert from his Duty when employed as aforeſaid, or ſhall knowingly and willingly permit any Perſon, Ship, Veſſel, Goods, or Merchandize, to depart or be conveyed out of the ſaid Lazaret, Ship, or other Place as aforeſaid, unleſs by Permiſſion under an Order of His Majeſty, by and with the Advice of His Privy Council, or under an Order of three or more of the Lords or others of His Privy Council, or if any Perſon hereby authorized and directed to give a Certificate of a Ship having duly performed Quarantine or Airing, ſhall knowingly give a falſe Certificate thereof, every ſuch Perſon ſo offending ſhall be deemed guilty of Felony, and ſuffer Death, as in Caſes of Felony, without Benefit of Clergy; and if any ſuch Officer or Perſon ſhall knowingly and wilfully damage any Goods performing Quarantine under his Direction, he ſhall be liable to pay Treble Damages and full Coſts of Suit to the Owner of the ſame.

45 Geo. III. c. 10. —QUARANTINE. part without Authority, or giving falſe Certificates, or damaging Goods.

27. And be it further enacted, That if any Perſon not infected with the Plague, or other infectious Diſeaſe or Diſtemper as aforeſaid, nor liable to perform Quarantine, ſhall enter the ſaid Lazaret or other Place ſo appointed as aforeſaid, whilſt any Perſon or Perſons infected with the Plague or being under Quarantine ſhall be therein, ſuch Perſon ſo entering the ſaid Lazaret, or other Place ſo appointed as aforeſaid, ſhall perform Quarantine there, and if he or ſhe ſhall return or attempt to return from thence, unleſs in ſuch Caſes and by ſuch Licences as ſhall be directed and granted by virtue of ſuch Order or Orders of His Majeſty in Council, or of the Lords or others of His Majeſty's Privy Council, or any three or more of them, as aforeſaid, it ſhall and may be lawful to and for the Quarantine Officers, Watchmen, and other Perſons appointed to guard or ſecure the ſaid Lazaret or other Place ſo appointed as aforeſaid, by ſuch neceſſary Force as the Caſe ſhall require, to compel ſuch Perſons ſo returning or attempting to return, to repair into the ſaid Lazaret or other Place ſo appointed as aforeſaid, there to continue and perform Quarantine; and in caſe ſuch

Perſons not infected entering the Lazaret ſhall perform Quarantine, and attempting to eſcape may be compelled to return, and ſuch Perſons eſcaping ſhall ſuffer Death.

45 GEO. III, c. 10. —QUARANTINE.

Perſon ſhall actually eſcape out of the ſaid Lazaret, or other Place where he or ſhe ought to have performed Quarantine, before he or ſhe ſhall have fully performed the ſame, he or ſhe ſhall be adjudged guilty of Felony, and ſhall ſuffer Death, as in Caſes of Felony, without Benefit of Clergy.

After Proof of Performance of Quarantine and proper Certificate to that Effect, Veſſels or Perſons ſhall not be liable to further Detention.

28. And be it further enacted, That after Quarantine ſhall have been duly performed by any Ship or Veſſel, Perſon or Perſons, obliged to perform Quarantine as aforeſaid, according to this Act, and to ſuch Order or Orders made as aforeſaid, and upon Proof to be made by the Oaths of the Maſter or other Perſon having Charge of ſuch Ship or Veſſel, and of two of the Perſons belonging thereto, or upon Proof to be made by the Oaths of two or more credible Witneſſes, before the Collector or principal Officer of the Cuſtoms, at the Port where ſuch Quarantine ſhall be performed, or at the Port neareſt thereunto, or before any Juſtice of the Peace living near to the Port or Place, or when ſuch Quarantine ſhall have been performed within any of the ſaid Iſles of Guernſey, Jerſey, Alderney, Sark, or Man, before any two Jurats or Magiſtrates of any of the ſaid Iſles reſpectively, that ſuch Ship or Veſſel, and all and every ſuch Perſon and Perſons reſpectively, have duly performed Quarantine as aforeſaid, and that the Ship or Veſſel, and all and every Perſon and Perſons are free from Infection; and after producing a Certificate to that Purpoſe, ſigned by the chief Officer who ſuperintended the Quarantine of the ſaid Ship, or Perſon acting for him, then and in the ſaid reſpective Caſes ſuch Collector or principal Officer of the Cuſtoms, or ſuch Juſtice of the Peace, or ſuch Jurats or Magiſtrates as aforeſaid, reſpectively, are hereby required to give a Certificate thereof, and thereupon ſuch Ship or Veſſel, and all and every ſuch Perſon or Perſons ſo having performed Quarantine, ſhall be liable to no further Reſtraint or Detention upon the ſame Account for which ſuch Ship or Veſſel, Perſon or Perſons, ſhall have performed Quarantine as aforeſaid.

Goods liable to perform Quarantine ſhall be opened and aired as directed by Order in Council,

29. And be it further enacted, That all Goods, Wares, and Merchandize, and other Articles liable to Quarantine as aforeſaid, ſhall be opened and aired in ſuch Place or Places, and for ſuch Time and in ſuch Manner, as ſhall be directed by His Majeſty, His Heirs and Succeſſors, by ſuch Order or Orders to be made as aforeſaid; and after ſuch Orders ſhall have been duly complied with, a Certificate thereof ſhall be

given by the chief Officer appointed to ſuperintend the Quarantine and airing of ſuch Goods, Wares, and Merchandize, and other Articles, or by the Perſon acting for him, and Proof thereof ſhall be made by the Oaths of two or more credible Witneſſes, before the Collector or other principal Officer of the Cuſtoms at the Port lying next to ſuch Place or Places where ſuch Goods, Wares, or Merchandize, or other Articles, ſhall have been opened and aired as aforeſaid, or before any Juſtices of the Peace living near the ſame, or before any two Jurats or Magiſtrates of the ſaid Iſles of Guernſey, Jerſey, Alderney, Sark, or Man, reſpectively; which Collector or other principal Officer, or ſuch Juſtice or Jurats or Magiſtrates, reſpectively, as the Caſe may be, ſhall alſo make Certificate of ſuch Proof having been made; and upon the Production of ſuch Certificates to His Majeſty's Commiſſioners of the Cuſtoms in England or Scotland reſpectively, or to the Governor or Lieutenant Governor, Commander in Chief or chief Magiſtrates of any of the ſaid laſt-mentioned Iſlands, as the Caſe may be, ſuch Goods, Wares, and Merchandize, and other Articles, ſhall be forthwith diſcharged from any Reſtraint or Detention upon the ſame Account, by Order of the ſaid Commiſſioners, or any three or more of them, or of the ſaid Governor, Lieutenant Governor, Commander in Chief, or chief Magiſtrate reſpectively.

45 GEO. III. c. 10. —QUARANTINE.

Proof of which ſhall be made before the Officer of the Cuſtoms, &c. who ſhall grant Certificates thereof, which ſhall entitle them to be diſcharged from further Detention.

30, And be it further enacted, That if any Perſon ſhall knowingly and wilfully forge or counterfeit, or procure to be forged or counterfeited, any Certificate directed and required to be granted by this Act, or ſhall publiſh as true any ſuch forged or counterfeited Certificate, knowing the ſame to be forged or counterfeited, he or ſhe ſhall be adjudged guilty of Felony, and ſhall ſuffer Death, as in caſes of Felony, without Benefit of Clergy.

Perſons forging certificates, &c. ſhall ſuffer death.

31, And be it further enacted, That if any Perſon ſhall land or unſhip, or ſhall move, in order to the landing or unſhipping thereof, any Goods, Wares, or Merchandize, Packets, Packages, Baggage, Wearing Apparel, Books, Letters, or any other Articles whatever, from on board any Ship or Veſſel liable to perform Quarantine as aforeſaid, or ſhall knowingly receive the ſame after they have been ſo landed or unſhipped, every ſuch Perſon ſhall forfeit and pay a Sum not exceeding the Sum of Five hundred Pounds, nor leſs than the Sum of One hundred Pounds; and if any Perſon or Perſons ſhall

Penalty on perſons landing goods, &c. from veſſels liable to quarantine, or receiving or ſecreting them from veſſels performing quarantine.

45 GEO. III, c. 10. —QUARANTINE.

clandeſtinely convey, or ſhall ſecrete or conceal for the Purpoſe of conveying, any Letters, Goods, Wares, or Merchandize, or other Articles as aforeſaid, from any Ship or Veſſel actually performing Quarantine, or from the Lazaret or other Place where ſuch Goods, Wares, Merchandize, or other Articles as aforeſaid, ſhall be performing Quarantine, every ſuch Perſon ſo offending as laſt aforeſaid ſhall be adjudged guilty of Felony, and ſhall ſuffer Death, as in Caſes of Felony, without Benefit of Clergy.

His majeſty in certain caſes may prohibit veſſels under 20 tons from ſailing until bond be given by the maſter with certain conditions.

32. And be it further enacted, That in caſe it ſhall at any Time happen that any part of Great Britain, Ireland, or the Iſles of Guernſey, Jerſey, Alderney, Sark, or Man, or France, Spain, or Portugal, or the Low Countries, ſhall be infected with the Plague, or any other ſuch infectious Diſeaſe or Diſtemper as aforeſaid, it ſhall and may be lawful to and for his Majeſty, his Heirs and Succeſſors, by his or their Proclamation, to prohibit and reſtrain all ſmall Boats and Veſſels under the Burthern of Twenty Tons, from ſailing or paſſing out of any Port or Place of Great Britain, or the Iſles of Guernſey, Jerſey, Alderney, Sark, and Man, or any of them, until Security be firſt given by the Maſter of every ſuch Boat or Veſſel reſpectively, to the Satisfaction of the principal Officer of the Cuſtoms, or the chief Magiſtrate of the Port or Place from whence ſuch Boat or Veſſel ſhall ſail, by Bond taken by ſuch Officer or Magiſtrate, to the King, his Heirs or Succeſſors, with ſufficient Sureties in the Penalty of Three hundred Pounds, with Condition that if ſuch Boat or Veſſel ſhall not go to or touch at any Country, Port or Place, to be mentioned for that Purpoſe in ſuch Proclamation, and if neither the Maſter or other Perſon having Charge of ſuch Boat or Veſſel, nor any Mariner or Paſſenger in ſuch Boat or Veſſel, ſhall, during the Time aforeſaid, go on board any other Ship or Veſſel at Sea, and ſuch Maſter or other Perſon having Charge of ſuch Boat or Veſſel, ſhall not permit or ſuffer any Perſon or Perſons to come on board ſuch Boat or Veſſel at Sea, from any other Ship or Veſſel, and ſhall not, during the Time aforeſaid, receive any Goods and Merchandize whatſoever, out of any other Ship or Veſſel, then ſuch Bond ſhall be void, for the making of which Bond no Fee or Reward whatſoever ſhall be taken; and in caſe any Boat or Veſſel, for which ſuch Security ſhall be required by ſuch Proclamation, ſhall ſet ſail or paſs out of any Port or Place of Great Britain, or the Iſlands

Penalty for ſailing without giving ſuch ſecurity.

of Guernſey, Jerſey, Alderney, Sark, and Man, and any of them reſpectively, before ſuch Security be given as aforeſaid, every ſuch Boat or Veſſel ſo ſailing or paſſing out of any Port or Place, contrary to the true Intent and Meaning of this Act, together with her Tackle, Apparel, and Furniture, ſhall be forfeited to his Majeſty, his Heirs and Succeſſors, and the Maſter of and every Mariner ſailing in any ſuch Boat or Veſſel, ſhall ſeverally forfeit and pay the Sum of Twenty Pounds. 45 GEO. III. c. 10. —QUARANTINE.

33, And be it further enacted, That the Publication in the London Gazette of any Order in Council, or of any Order by Three or more of the Lords or others of his Majeſty's Privy Council, made in purſuance of this Act, or his Majeſty's royal Proclamation, made in purſuance of the ſame, ſhall be deemed and taken to be ſufficient Notice to all Perſons concerned of all Matters therein reſpectively contained. Publication in the London Gazette of orders of council, &c. ſufficient notice.

34, And be it further enacted, That all Forfeitures and Penalties aforeſaid, that ſhall be incurred by reaſon of any Offence committed againſt any Part of this Act, ſhall and may be recovered by Suit in any of his Majeſty's Courts of Record at Weſtminſter, in which no Eſſoign or Wager of Law, or more than One Imparlance ſhall be granted, or in Scotland by ſummary Action in the Court of Seſſion, or by Proſecution before the Court of Juſticiary there, or by Suit in any of his Majeſty's Courts in the Iſlands of Guernſey, Jerſey, Alderney, Sark, or Man; and every ſuch Forfeiture and Penalty ſhall belong and be given, One Moiety to the Perſon who ſhall inform and ſue for the ſame, and the other Moiety to his Majeſty, his Heirs and Succeſſors, to be applied towards defraying the Expences of erecting and maintaining the Lazaret as aforeſaid. Recovery and application of penalties.

35, Provided always, and be it further enacted, That it ſhall not be lawful for any Perſon or Perſons whatſoever, to commence, proſecute, enter, or file, or cauſe or procure to be commenced, proſecuted, entered, or filed, any Action, Bill, Plaint, Information, or Proſecution, or Actions, Bills, Plaints, Informations, or Proſecutions, in any of his Majeſty's Courts in England or Scotland, or any Proceeding or Proceedings, before any Juſtices of the Peace of any County, Riding, Diviſion, City, Town, Stewartry, or Place, for the Recovery of any Fine, Penalty, or Forfeiture, Fines, Penalties, or Forfeitures, incurred by reaſon of any Offence committed againſt this Act, or againſt any Order or Orders made by his Majeſ- In whoſe name actions for penalties in England or Scotland muſt be proſecuted.

45 GEO. III, c. 10. —QUARANTINE.

ty, his Heirs or Succeſſors, in Council, or by any Three or more of the Lords or others of his Majeſty's Privy Council as aforeſaid, unleſs the ſame be commenced, proſecuted, entered, or filed in the Name of his Majeſty's Attorney General in England or Advocate in Scotland reſpectively, or in the Name or Names of ſome Officer or Officers of the Cuſtoms in England or Scotland reſpectively; and if any Action, Bill, Plaint, Information, or Proſecution, Actions, Bills, Plaints, Informations, or Proſecutions, or any Proceeding or Proceedings before any Juſtices as aforeſaid, ſhall be commenced, proſecuted, entered, or filed, in the Name or Names of any other Perſon or Perſons than is in that Behalf before mentioned, the ſame ſhall be and are hereby declared to be null and void.

In proſecutions by officers of the cuſtoms the attorney general in England or advocate in Scotland may ſtop proceedings.

36, Provided alſo, and be it further enacted, That in caſe any Proſecution, Suit, Complaint, or other Proceeding, as aforeſaid, ſhall be commenced or depending by any Officer or Officers of the Cuſtoms, for the Recovery of any Fine, Penalty, or Forfeiture, Fines, Penalties, or Forfeitures, incurred by reaſon of any Offence committed againſt this Act, or againſt any Order or Orders made by his Majeſty, his Heirs or Succeſſors in Council, or by any Three or more of the Lords or others of his Majeſty's Privy Council as aforeſaid, it ſhall and may be lawful for his Majeſty's Attorney General in England, or Advocate in Scotland, reſpectively, to ſtop all further Proceedings therein, as well with reſpect to the Share of ſuch Fine, Penalty, or Forfeiture, Fines, Penalties, or Forfeitures, to which any ſuch Officer or Officers ſhall or may claim to be entitled, as to the Share thereof belonging to his Majeſty, if upon Conſideration of the Circumſtances under which any ſuch Fine, Penalty, or Forfeiture, Fines, Penalties, or Forfeitures, may have been incurred, it ſhall appear to them reſpectively to be fit and proper ſo to do.

Perſons ſwearing falſely, or procuring others ſo to do, ſhall be deemed guilty of perjury.

37, And be it further enacted, That in all Caſes wherein by or by virtue and in purſuance of this Act, any Examinations or Anſwers ſhall be taken or made upon Oath, the Perſon who ſhall be authorized and required to take ſuch Examinations and Anſwers, ſhall and ſhall be deemed to have full Power and Authority to adminiſter ſuch Oaths; and if any Perſon who ſhall be ſo interrogated or examined, ſhall wilfully ſwear falſely to any Matter, concerning which ſuch

Perſon ſhall depoſe or make Oath on ſuch Examination or in ſuch Anſwers, or if any Perſon ſhall procure any other Perſon ſo to do, he or ſhe ſo ſwearing falſely, or procuring any other Perſon ſo to do, ſhall be deemed to have been guilty of and ſhall be liable to be proſecuted for wilful and corrupt Perjury, or Subornation of wilful and corrupt Perjury, as the Caſe may be, and ſhall ſuffer the Pains, Penalties, and Puniſhments of the Law in ſuch Caſe reſpectively made and provided. 45 GEO. III. c. 10. —QUARANTINE.

38, And be it further enacted, That all Offences committed againſt any of the Proviſions of this Act, not being Felony, and every Offence or Diſobedience to any Order of Council made for the better carrying into Execution this Act, for which no ſpecific Penalty, Forfeiture, or Puniſhment is provided by this Act, ſhall and may be tried, heard, and determined before any Two Juſtices of the Peace of the County, Riding, Diviſion, City, or Place where ſuch Offence or Diſobedience ſhall happen; and if any Perſon ſhall be convicted of any ſuch Offence or Diſobedience, he or ſhe ſhall be liable to ſuch Forfeiture and Penalty, not exceeding the Sum of Fifty Pounds for any One Offence, or to ſuch Impriſonment not exceeding Three Months for any One Offence, as ſhall, in the Diſcretion of the Two Juſtices who ſhall have heard and determined the ſame, be judged proper; and ſuch Forfeiture and Penalty ſhall be paid, One Moiety to the Perſon ſuing for the ſame, and the other to his Majeſty, to be applied as the Moieties of other Forfeitures and Penalties are herein-before directed to be applied. Offences, not being felony, and offences for which no ſpecific penalty is provided, may be determined before two juſtices, who may fine or impriſon. Application of penalties.

39, Provided always, and it is hereby enacted, That no Attainder of Felony by virtue of this Act, ſhall be extended to work any Corruption of Blood, or Forfeiture of any Goods, Chattels, Lands, Tenements, or Hereditaments. No attainder of felony ſhall work corruption of blood, &c.

40, And be it farther enacted, That in any Proſecution, Suit, or other Proceeding againſt any Perſon or Perſons whatſoever for any Offence againſt this Act, or any Act which may hereafter be paſſed concerning Quarantine, or for any breach or Diſobedience of any Order or Orders which ſhall be made by His Majeſty, His Heirs or Succeſſors, by and with the Advice of His or their Privy Council, concerning Quarantine, and the Prevention of Infection, and notified or publiſhed as aforeſaid, or of any Order or Orders made by Three or more of the Lords or others of the Privy Anſwers of Perſons having the Charge of Veſſels ſhall be received as Evidence, ſo far as relates to the Places from which Veſſels came, or at which

45 GEO. III, c. 10. —QUARANTINE.

Council as aforeſaid, the Anſwer or Anſwers of the Commander, Maſter, or other Perſon having Charge of any Ship or Veſſel to any Queſtions or Interrogatories put to him by virtue and in purſuance of this Act, or of any Act which may hereafter be paſſed concerning Quarantine, or of any ſuch Order or Orders as aforeſaid, may and ſhall be given and received as Evidence ſo far as the ſame relates or relate to the Place from which ſuch Ship or Veſſel came, or to the Place or Places at which ſuch Ship or Veſſel touched in the Courſe of her Voyage; and where any Ship or Veſſel ſhall have been directed to perform Quarantine by the Superintendant of Quarantine or his Aſſiſtant, or where there is no ſuch Superintendant or Aſſiſtant, by the principal Officer of the Cuſtoms at any Port or Place, or other Officer of the Cuſtoms authorized as aforeſaid to act in that Behalf, the having been ſo directed to perform Quarantine may and ſhall be given and received as Evidence that ſuch Ship or Veſſel was liable to Quarantine, unleſs ſatisfactory Proof ſhall be produced by the Defendant or Defendants in any ſuch Proſecution, Suit, or other Proceeding, to ſhew that the Ship or Veſſel did not come from or touch at any ſuch Place or Places as is or are ſtated in the ſaid Anſwer or Anſwers, or that ſuch Ship or Veſſel, although directed to perform Quarantine, was not liable to the Performance thereof; and where any Ship or Veſſel ſhall in fact have been put under Quarantine at any Port or Place, by the Superintendant of Quarantine or his Aſſiſtant, or other Officer of the Cuſtoms authorized as aforeſaid to act in that Behalf, and ſhall actually be performing the ſame, ſuch Ship or Veſſel ſhall, in any Proſecution, Suit, or other Proceeding againſt any Perſon or Perſons whatever, for any Offence againſt this Act, or any other Act which may hereafter be paſſed concerning Quarantine, or againſt any Order or Orders concerning Quarantine, and the Prevention of Infection, which ſhall be made by His Majeſty in Council, or by Three or more of the Lords or others of His Privy Council as aforeſaid, be deemed and taken to be liable in Quarantine, without proving in what Manner or from what Circumſtances ſuch Ship or Veſſel became liable to the Performance thereof.

they touched, and the having been directed to perform Quarantine ſhall be received as Evidence that Veſſels were liable thereto.

If Affidavit be made of an Indictment being

41, And be it further enacted, That whenever any Perſon or Perſons ſhall be charged with any Offence againſt this Act, or any Act which may hereafter be paſſed concerning

Quarantine, or with any breach or Diſobedience of any Order or Orders which ſhall be made by His Majeſty, His Heirs or Succeſſors, in Council as aforeſaid, or of any Order or Orders made by the Lords or others of the Privy Council, or any Three or more of them as aforeſaid, and the ſame ſhall be made appear to any Judge of His Majeſty's Court of King's Bench, by Affidavit or by Certificate, of an Indictment or Information being filed againſt ſuch Perſon or Perſons in the ſaid Court for ſuch Offence, it ſhall and may be lawful for ſuch Judge to iſſue his Warrant in writing under his Hand and Seal, and thereby to cauſe ſuch Perſon or Perſons to be apprehended and brought before him or ſome other Judge of the ſaid Court, or before ſome One of His Majeſty's Juſtices of the Peace, in order to his, her, or their being bound to the King's Majeſty with two ſufficient Sureties in ſuch Sum as in the ſaid Warrant ſhall be expreſſed, with Condition to appear in the ſaid Court at the Time mentioned in ſuch Warrant, and to anſwer to all and ſingular Indictments or Informations for any of the Offences aforeſaid; and in caſe ſuch Perſon or Perſons ſhall neglect or refuſe to become bound as aforeſaid, it ſhall be lawful for ſuch Judge or Juſtice of the Peace reſpectively, to commit ſuch Perſon or Perſons to the common Gaol of the County, City, or Place where the Offence ſhall have been committed, or where he, ſhe, or they ſhall have been ſo apprehended, until he, ſhe, or they ſhall have become bound as aforeſaid, or ſhall be diſcharged by Order of the ſaid Court of King's Bench in Term Time, or by One of the Judges of the ſaid Court in Vacation, and the Recognizance or Recognizances to be taken thereupon ſhall be returned and filed in the ſaid Court, and ſhall continue in force until ſuch Perſon or Perſons ſhall have been acquitted of ſuch Offence, or in caſe of Conviction ſhall have received judgment for the ſame, unleſs ſooner ordered by the ſaid Court to be diſcharged; and that where any Perſon or Perſons, by virtue of ſuch Warrant and Commitment as aforeſaid, is or are now detained, or ſhall hereafter be committed and detained in any Gaol for Want of Bail, it ſhall be lawful for the Proſecutor of ſuch Indictment or Information to cauſe a Copy thereof to be delivered to ſuch Perſon or Perſons, or to the Gaoler, Keeper, or Turnkey of the Gaol wherein ſuch Perſon or Perſons is, are, or ſhall be ſo detained, with a Notice thereon

45 GEO. III. c. 10, —QUARANTINE.

filed, the Judge of the Court may cauſe the Party to be apprehended in order to be bound for his Appearance, and if he refuſe to become bound he may be committed to Gaol.

Where Perſons are detained for Want of Bail, the Proſecutor may cauſe a Copy of the Indictment to be deli-

45 GEO. III. c. 10. —QUARANTINE.

indorſed, that unleſs ſuch Perſon or Perſons ſhall, within eight Days from the Time of ſuch Delivery of a Copy of the Indictment or Information as aforeſaid, cauſe an Appearance, and alſo a Plea or Demurrer to be entered in the ſaid Court to ſuch Indictment or Information, an Appearance and the Plea of Not Guilty will be entered thereto, in the Name or Names of ſuch Perſon or Perſons reſpectively; and in caſe he, ſhe, or they ſhall thereupon, for the ſaid Space of Eight Days after ſuch Delivery of a Copy of the Indictment or Information as aforeſaid, neglect to cauſe an Appearance, and alſo a Plea of Demurrer to be entered in the ſaid Court to ſuch Indictment or Information, it ſhall be lawful for the Proſecutor of ſuch Indictment or Information, upon an Affidavit being made and filed in the ſaid Court, of a Delivery of a Copy of ſuch Indictment or Information, with ſuch Notice indorſed thereon as aforeſaid, to ſuch Perſon or Perſons, or to ſuch Gaoler, Keeper, or Turnkey, as the Caſe may be, which Affidavit may be made before any Judge or Commiſſioner of the ſaid Court authorized to take Affidavits in the ſaid Court, to cauſe an Appearance and the Plea of Not Guilty to be entered in the ſaid Court to ſuch Indictment or Information, for ſuch Perſon or Perſons reſpectively; and ſuch Proceedings ſhall be had thereupon, as if the Defendant or Defendants in ſuch Indictment or Information had appeared and pleaded Not Guilty, according to the uſual Courſe of the ſaid Court; and that if upon the Trial of ſuch Indictment or Information, the Defendant or Defendants ſo committed and detained as aforeſaid ſhall be acquitted of all the Offences therein charged upon him, her, or them, it ſhall be lawful for the Judge before whom ſuch Trial ſhall be had, although he may not be One of the Judges of the ſaid Court of King's Bench, to order that ſuch Defendant or Defendants ſhall be forthwith diſcharged out of Cuſtody, as to his, her, or their Commitment as aforeſaid; and ſuch Defendant or Defendants ſhall be thereupon diſcharged accordingly.

Delivered to the Gaoler, with Notice that, unleſs an Appearance, &c. be entered within a limited Time, they will be entered, in which Caſe certain Proceedings ſhall be had.

Where Offences may be tried.

42, And be it further enacted, That all Offences committed contrary to or in Breach or Violation of this or any other Act hereafter to be paſſed, or of any Order or Orders of His Majeſty, His Heirs or Succeſſoes, now or hereafter to be made in His or their Privy Council, concerning Quarantine and the Prevention of Infection, and notified by Proclamation,

or publiſhed in the London Gazette, or of any Order or Orders made by Three or more of the Lords or others of the Privy Council as aforeſaid, whether the ſaid Offence ſhall be done and committed within the Body of any County, or upon the High Seas or elſewhere, ſhall and may be tried, heard, and determined in any County within England or Scotland, or in the proper Courts of the Iſles of Guernſey, Jerſey, Alderney, Sark, or Man, reſpectively. 45 GEO. III, c. 10, —QUARANTINE.

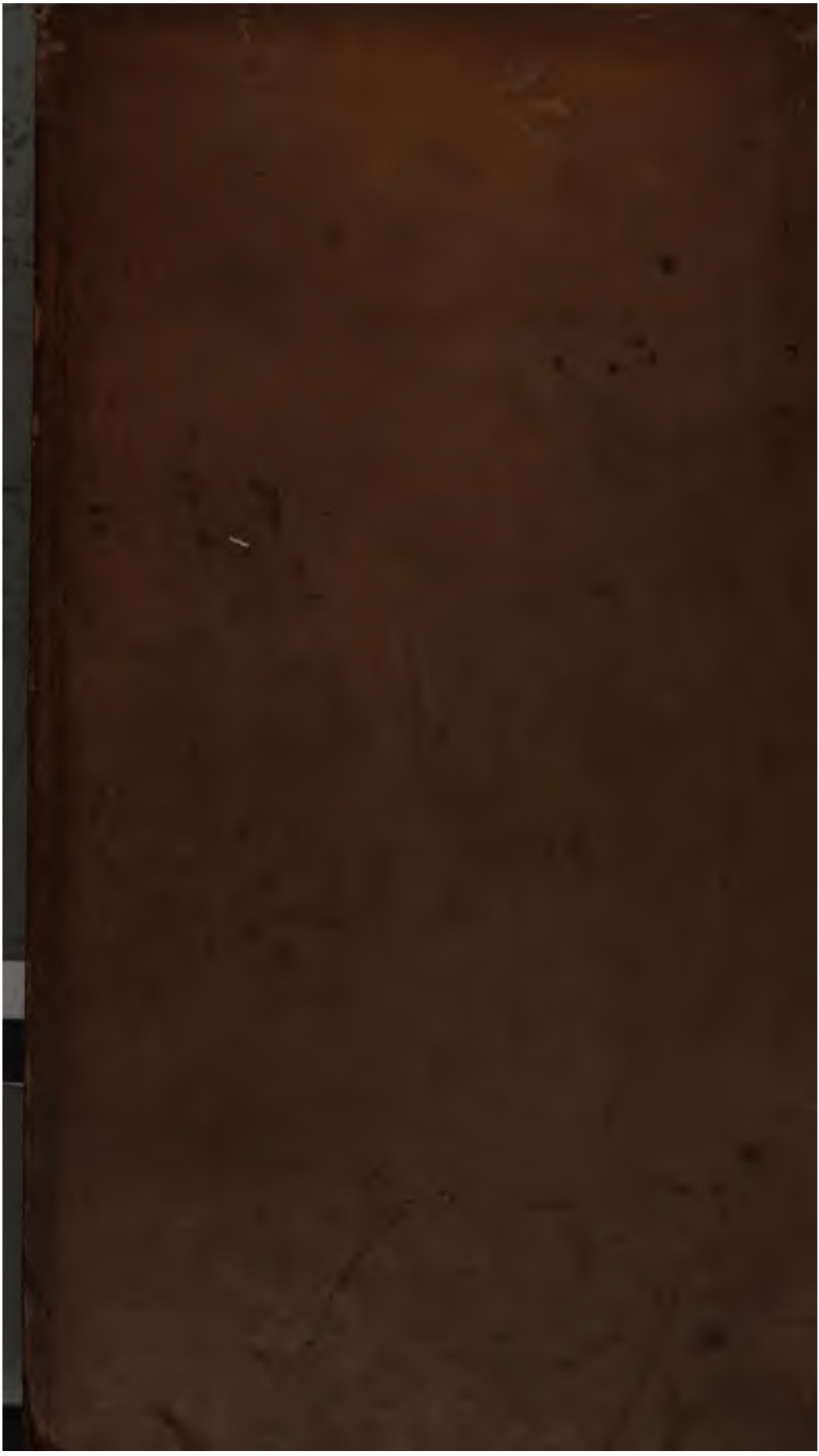
43. And be it further enacted, That if any Action or Suit ſhall be commenced againſt any Perſon or Perſons, for any Thing done in purſuance and Execution of this preſent Act, or of any Order of Council made by virtue thereof, the Defendant or Defendants in ſuch Action or Suit may plead the General Iſſue, and give this Act and the ſpecial Matter in Evidence at any Trial to be had thereupon, and that the ſame was done in purſuance and in Execution of the ſaid Act; and if it ſhall appear ſo to have been done, then the Jury ſhall find for the Defendant or Defendants; and if the Plaintiff ſhall be nonſuited, or diſcontinue his Action after the Defendant or Defendants ſhall have appeared, or if Judgment ſhall have been given upon any Verdict or Demurrer againſt the Plaintiff, the Defendant or Defendants ſhall and may recover treble Coſts, and have the like Remedy for the ſame as the Defendant or Defendants hath or have in other Caſes by Law; and that no ſuch Action or Suit ſhall be brought againſt any Perſon for any Matter or Thing done in purſuance or Execution of this Act, but within the Space of Two Months after ſuch Matter or Thing ſhall have been done. General iſſue. Treble Coſts. Limitation of Actions.

44. And be it further enacted, That this Act ſhall commence and take Effect, except as is herein-before otherwiſe provided, on the Fifth Day of April One thouſand eight hundred and five, and may be altered, varied, or repealed, by any Act or Acts to be made in this preſent Seſſion of Parliament. Commencement of Act, which may be altered or repealed this Seſſion.

No. LXIX.

45 GEO. III, c. 48, *Nominating Commiſſioners for levying the Land Tax.*

3, PROVIDED always, and be it enacted by the Authority foreſaid, that the ſeveral and reſpective Perſons hereby appointed Commiſſioners ſhall be ſubject and liable to the ſame Qualifications, and to ſuch and the ſame Pains, Penalties, and Forfeitures, for the like or ſimilar Offences, as the ſeveral and reſpective Perſons acting in Execution of the ſaid recited Act, made in the 38th Year of the Reign of his preſent Majeſty, intituled, "An Act for granting an Aid to his Majeſty by a Land Tax, to be raiſed in Great Britain for the Service of the Year 1798," are thereby made ſubject and liable to: Provided alſo, *that all Perſons who ſhall act as Juſtices of the Peace of or for any County, Riding, Shire, or Stewartry in* Great Britain, being duly qualified as aforeſaid, *may act as ſuch Commiſſioners, although not ſpecially named in this Act*: Provided alſo, that the Acts before mentioned made in the 37th, 38th, and 40th Years of the Reign of his preſent Majeſty, ſhall continue in force until and upon the 10th Day of October 1805, any Thing herein or in the ſaid recited Act of this Seſſion of Parliament to the contrary notwithſtanding.

END OF THE FIRST VOLUME.

Edinburgh, printed by Mundell and Son.